

**Chapter 109 reserved**

**DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES**

**CHAPTER 110**

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## Subchapter 1

## Food, Drugs and Cosmetics

**37. 110. 101 FOOD STANDARDS** (1) The department adopts by reference the following federal regulations establishing food definitions and standards promulgated by the United States food and drug administration which are found in the corresponding parts of Title 21 of the Code of Federal Regulations (CFR) as of April 1, 2001:

- |   |                      |
|---|----------------------|
| (a) Color additives   | 21 CFR 70            |
| (b) Color additive petitions  | 21 CFR 71            |
| (c) Listing of color additives exempt from certification  | 21 CFR 73            |
| (d) Listing of color additives subject to certification   | 21 CFR 74            |
| (e) Color additive certification  | 21 CFR 80            |
| (f) General specifications and general restrictions for provisional color additives for use in foods, drugs and cosmetics | 21 CFR 81            |
| (g) Listing of certified provisionally listed colors and specifications   | 21 CFR 82            |
| (h) Dissemination of information on unapproved/new uses for marketed drugs, biologics and devices                         | 21 CFR 99            |
| (i) General (food for human consumption)  | 21 CFR 100 Subpart G |
| (j) Food labeling   | 21 CFR 101           |
| (k) Common or usual name for non-standardized foods   | 21 CFR 102           |
| (l) Nutritional quality guidelines for foods  | 21 CFR 104           |
| (m) Foods for special dietary use   | 21 CFR 105           |
| (n) Infant formula quality control procedures   | 21 CFR 106           |
| (o) Infant formula  | 21 CFR 107           |
| (p) Emergency permit control  | 21 CFR 108           |
| (q) Unavoidable contaminants in food for human consumption and food-packaging material                                    | 21 CFR 109           |
| (r) Current good manufacturing practice in manufacturing, packing or holding human food                                   | 21 CFR 110           |
| (s) Current good manufacturing practice for dietary supplements   | 21 CFR 111           |
| (t) Thermally processed low-acid foods packaged in hermetically sealed containers   | 21 CFR 113           |

(u)	Acidified foods	21 CFR 114
(v)	Shell eggs	21 CFR 115
(w)	Hazard analysis and critical control point (HACCP) systems	21 CFR 120
(x)	Fish and fishery products	21 CFR 123
(y)	Processing and bottling of bottled drinking water	21 CFR 129
(z)	Food standards: general	21 CFR 130
(aa)	Milk and cream	21 CFR 131
(ab)	Cheeses and related cheese products	21 CFR 133
(ac)	Frozen desserts	21 CFR 135
(ad)	Bakery products	21 CFR 136
(ae)	Cereal flours and related products	21 CFR 137
(af)	Macaroni and noodle products	21 CFR 139
(ag)	Canned fruits	21 CFR 145
(ah)	Canned fruit juices	21 CFR 146
(ai)	Fruit butters, jellies, preserves, and related products	21 CFR 150
(aj)	Fruit pies	21 CFR 152
(ak)	Canned vegetables	21 CFR 155
(al)	Vegetable juices	21 CFR 156
(am)	Frozen vegetables	21 CFR 158
(an)	Eggs and egg products	21 CFR 160
(ao)	Fish and shellfish	21 CFR 161
(ap)	Cacao products	21 CFR 163
(aq)	Tree nut and peanut products	21 CFR 164
(ar)	Beverages	21 CFR 165
(as)	Margarine	21 CFR 166
(at)	Sweeteners and table syrups	21 CFR 168
(au)	Food dressing and flavorings	21 CFR 169
(av)	Food additives	21 CFR 170
(aw)	Food additive petitions	21 CFR 171
(ax)	Food additives permitted for direct addition to food for consumption	21 CFR 172
(ay)	Secondary direct food additives permitted in food for human consumption	21 CFR 173
(az)	Indirect food additives: general	21 CFR 174
(ba)	Indirect food additives: adhesives and components of coatings	21 CFR 175
(bb)	Indirect food additives: paper and paperboard components	21 CFR 176
(bc)	Indirect food additives: polymers	21 CFR 177

- (bd) Indirect food additives: adjuvants, production aids and sanitizers 21 CFR 178
- (be) Irradiation in the production, processing and handling of food 21 CFR 179
- (bf) Food additives permitted in food on an interim basis or in contact with food pending additional study 21 CFR 180
- (bg) Prior-sanctioned food ingredients 21 CFR 181
- (bh) Substances generally recognized as safe 21 CFR 182
- (bi) Direct food substances generally recognized as safe 21 CFR 184
- (bj) Indirect food substances affirmed as generally recognized as safe 21 CFR 186
- (bk) Substances prohibited from use in human food 21 CFR 189
- (bl) Dietary supplements 21 CFR 190

(2) Copies of the federal regulations which were adopted and incorporated by reference under (1) may be obtained, upon payment of copying costs, from the Department of Public Health and Human Services, Food and Consumer Safety Section, 1400 Broadway, P. O. Box 202951, Helena, Montana 59620-2951, phone: (406) 444-2408. (History: Sec. 50-31-104, 50-31-108 and 50-31-201, MCA; IMP, Sec. 50-31-101, 50-31-104 and 50-31-203, MCA, Eff. 12/31/72; AMD, 1979 MAR p. 321, Eff. 3/30/79; AMD, 1982 MAR p. 2123, Eff. 1/15/83; AMD, 1994 MAR p. 2743, Eff. 10/14/94; TRANS, from DHES, 2001 MAR p. 2423; AMD, 2003 MAR p. 20, Eff. 1/17/03.)

## Subchapter 2

## Food Service Establishments

**37.110.201 INTRODUCTION** (1) This is a subchapter regulating food service establishments that serve prepared food and drink to the public, as provided in Title 50, chapter 50, MCA.

(2) This subchapter defines food, potentially hazardous food, food service establishment, mobile food service, semi permanent food service establishment, temporary food service establishment, regulatory authority, utensils, equipment, etc.; provides for the sale of only sound, safe, properly labeled food; regulates the sources of food; establishes sanitation standards for food, food protection, food service operations, food service personnel, food service and utensils, sanitary facilities and controls, and other facilities; requires licenses for the operation of food service establishments; regulates the inspection of such establishments; provides for the examination and condemnation of food; provides for enforcement of this subchapter, and the fixing of penalties.

(3) All food service establishments must comply with all appropriate building construction standards as set forth by 50-60-101, MCA and all applicable administrative rules as adopted by the department of commerce in ARM Title 8. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.202 PURPOSE** (1) This subchapter shall be liberally construed and applied to promote its underlying purpose which is to prevent and eliminate conditions and practices which endanger public health. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.203 DEFINITIONS** For the purpose of this subchapter:

- (1) "Adulterated" means a food:
  - (a) that bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;
  - (b) that bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by laws or rules or in excess of such tolerance if one has been established;
  - (c) that consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption;
  - (d) that has been processed, prepared, packed or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
  - (e) that is in whole or in part a product of a diseased animal, or an animal which has died otherwise than by slaughter;
  - (f) whose container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or
  - (g) as otherwise determined to be "adulterated" under the Montana Food, Drug and Cosmetic Act, 50-31-202, MCA.
- (2) "Approved" means acceptable to the regulatory authority based on its determination of conformity with safe food manufacturing and processing methods.
- (3) "Aw" means water activity which is a measure of the free moisture in a food and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.
- (4) "Beverage" means a liquid for drinking, including water.
- (5) "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the federally-regulated national shellfish sanitation program.
- (6) "Code of Federal Regulations (CFR)" means the compilation of general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

(7) "Comminuted" means reduced in size by methods that include chopping, flaking, grinding, or mincing; fish or meat products that are reduced in size and restructured or reformulated, such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.

(8) "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment, and does not offer the food for resale;

(9) "Corrosion resistant material" means a material that maintains an easily cleanable surface under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions-of-use environment.

(10) "Critical control point" means part of a food safety evaluation process, such as a HACCP plan, where loss of control may result in an unacceptable health risk.

(11) "Critical item" means a provision of this subchapter that, if violated, is more likely than other violations to contribute to food contamination, illness, or environmental degradation.

(12) "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk so that the identified food safety hazard may not occur.

(13) "Department" means the department of public health and human services.

(14) "Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

(15) "Easily cleanable" means a surface whose material, design, construction, and installation allows effective removal of soil by normal cleaning methods.

(16) "Easily movable" means any item that:

(a) weighs 50 pounds (23 kilograms) or less; is mounted on casters, gliders, or rollers; or is provided with a mechanical means requiring no more than 50 pounds (23 kilograms) of force to safely tilt a unit of equipment for cleaning; and

(b) has no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

(17) "EPA" means the federal environmental protection agency.

(18) "Equipment" means items, other than utensils, used in the operation of a food establishment, including stoves, ovens, ranges, hoods, slicers, mixers, meat blocks, tables, boxes, counters, refrigerators, sinks, dishwashing machines, steam tables, proof boxes and freezers.

(19) "Exotic species" means an animal that comes from or that is commonly found in another part of the world or in a foreign country. Cattle, sheep, swine, goats, and poultry are not considered exotic species.

(20) "Fish" means edible forms of aquatic animal life other than birds or mammals, encompassing both fresh and saltwater forms, and including molluscan shellfish and crustaceans.

(21) "Food" means a raw, cooked, or processed edible substance, beverage, or ingredient used, intended for use, or for sale in whole or in part for human consumption.

(22) "Food borne disease outbreak" means illness experienced by two or more persons after ingestion of a common food which an epidemiological analysis implicates as the source of the illness, a single case of illness from botulism, or chemical poisoning.

(23) "Food contact surfaces" means those surfaces of equipment or utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash into or onto food or surfaces normally in contact with food.

(24) "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(25) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it, used to manufacture or prepare food for sale for human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants; a food manufacturing establishment does not provide food directly to a consumer, and does not include a food service establishment as defined in this rule.

(26) "Food service establishment" means an operation defined in 50-50-102(8), MCA, and includes an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption in a mobile, stationary, temporary, semi permanent or permanent facility or location; where consumption is on or off the premises and regardless of whether there is a charge for the food. Food service establishment does not include:

(a) an establishment, vendor, or vending machine that sells or serves only non-perishable foods;

(b) an establishment that offers only prepackaged foods that are not potentially hazardous;

(c) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(d) a food manufacturing establishment;

(e) a kitchen in a private home if the food is prepared for sale or service at a function such as a religious or charitable organization's bake sale;

(f) a private home that receives catered or home-delivered food; or

(g) a private organization serving food to only its members.

(27) "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, goat, poultry, fish or ratites such as ostrich, emu, and rhea; but includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria or muskrat, and nonaquatic reptiles such as land snakes.

(28) "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis critical control point principles developed by the national advisory committee on microbiological criteria for foods.

(29) "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

(30) "Hermetically sealed container" means a container that is designed and made to be secure against the entry of microorganisms and in the case of low acid canned foods, to maintain the sterility of its content after processing.

(31) "Highly susceptible population" means a group of persons who are more likely than other populations to experience food borne disease because they have weak immune systems; such as patients and residents in a health care facility as provided in Title 50, chapter 5, MCA; older adults being served by such programs as meals on wheels, senior citizen centers, or similar programs; and children of preschool age in a day care center as provided in ARM Title 37, chapter 95.

(32) "Injected meat" means meat that has been manipulated, such as through tenderizing or inserting juices, that allows infectious or toxigenic microorganisms to be introduced from the meat's surface to its interior.

(33) "Kitchenware" means all multiuse utensils other than tableware used in the storage, preparation, conveying or serving of food.

(34) "Law" means applicable federal, state, and local statutes, ordinances, rules and regulations.

(35) "License" means a document issued by the department that authorizes a person or persons to operate a food service establishment, mobile food service establishment, or temporary food service establishment.

(36) "Linens" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments, including cloth gloves.

(37) "Local health authority" means a local board of health established in accordance with Title 50, chapter 2, MCA, and its employees, or the local health officer or the local sanitarian.

(38) "Meat" means the flesh of animals used as food, including the dressed flesh of cattle, swine, sheep, goats, bison, and other edible animals, except fish and poultry, that is offered for human consumption.

(39) "Mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

(40) "Mobile food service" means a vehicle-mounted food establishment designed to be readily movable.

(41) "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops, or their edible portions, but does not include the shucked adductor muscle of the scallop used alone.

(42) "Other authorized persons" means those persons working in a food service establishment that are allowed on the premises by the licensee or person in charge.

(43) "Packaged" means bottled, canned, cartoned, or securely wrapped, but does not include the wrapper, carry-out box, or other nondurable container used to protect the food during service and receipt of the food by the consumer.

(44) "Perishable food" means any food of such type or in such condition as may spoil.

(45) "Perishable food vending machine" means a self-servicing device that, upon insertion of a coin, paper currency, token, card, or key, dispenses packaged perishable food.

(46) "Person" means an individual, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(47) "Person in charge" means the individual present in the food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any food employee present is the person in charge.

(48) "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination that are used to maintain or enhance a person's health, hygiene, or appearance, including medicines, first aid supplies, cosmetics, and toiletries such as toothpaste and mouthwash.

(49) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution, with values between 0 and 7 indicating acidity, values between 7 and 14 indicating alkalinity, and the value of 7 considered neutral.

(50) "Physical facilities" means the structure and interior surfaces of a food establishment, including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(51) "Potentially hazardous food" means:

(a) a food that is a natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic micro-organisms;

(ii) the growth and toxin production of *Clostridium botulism*;  
or

(iii) in raw shell eggs, the growth of *Salmonella enteritidis*;

(b) a food of animal origin that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons; and garlic and oil mixtures;

(c) potentially hazardous food, which does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a water activity (aw) value of 0.85 or less;

(iii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 75°F, (24°C);

(iv) a food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which a variance granted by the department is based upon laboratory evidence demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium botulinum* cannot occur.

(52) "Poultry" means any domesticated birds, such as chickens, turkeys, ducks, geese, or guineas, whether live or dead.

(53) "Premises" means the physical facility, its contents, and the contiguous land or property under the control of the license holder; whether it is a stand-alone facility or whether it is only one component of a larger organization, such as a health care facility, hotel, motel, school, recreational camp, or prison.

(54) "Pushcart" means a non-self-propelled vehicle limited to serving non-potentially hazardous food, or wrapped food prepared beforehand in an approved food service establishment or food manufacturing establishment maintained at proper temperatures.

(55) "Ratites" means birds such as ostrich, emu, and rhea.

(56) "Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food service establishment or the consumer, and that is reasonably expected to be consumed in that form.

(57) "Reconstituted" means dehydrated food products combined with water or other liquids.

(58) "Reduced-oxygen packaging" means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is 21% oxygen, including altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging, including sous vide.

(59) "Refuse" means solid waste not carried by water through the sewage system, including discarded organic matter, garbage, trash, and other waste materials resulting from the operation of a food establishment.

(60) "Regulatory authority" means the Montana department of public health and human services or the local health authority, established in accordance with Title 50, chapter 2, MCA, and their employees, or the local health officer and/or the local sanitarian.

(61) "Safe temperature" means temperatures of 41°F (5°C) or below and 135°F (57.2°C) or above for perishable and potentially hazardous foods; 42°F through 45°F (5.5°C through 7°C) may also be considered safe if existing equipment cannot maintain 41°F (5°C) or below and food storage and display is reduced to a maximum of 4 days for ready-to-eat foods.

(62) "Safe materials" means articles manufactured from or composed of materials which may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials used are food additives or color additives as defined in 50-31-103(8) and (22), MCA, of the Montana Food, Drug, and Cosmetic Act, they are "safe" only if they are used in conformity with regulations established pursuant to section 409 or 706 of the applicable sections of the federal Food, Drug and Cosmetic Act. Other materials are "safe" only if, as used, they are not food additives or color additives as defined in 50-31-103(8) and (22), MCA, of the Montana Food, Drug, and Cosmetic Act and are used in conformity with all applicable regulations of the federal food and drug administration.

(63) "Sanitization" means the application of accumulative heat or concentration of chemicals on cleaned food contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logarithms, which is equal to 99.999% reduction of representative food borne disease microorganisms.

(64) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

(65) "Semi permanent stands" means those establishments which are not mobile and are not on permanent foundations.

(66) "Servicing area" means an operation base location to which a mobile food service, food transportation vehicle or pushcart returns regularly for maintenance such as vehicle and equipment cleaning, discharge of liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

(67) "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may contain chemicals in solution.

(68) "Shellstock" means raw, in-shell molluscan shellfish.

(69) "Shucked shellfish" means molluscan shellfish that have one or both shells removed.

(70) "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks and other similar articles that are designed and constructed for one-time, one-person use and then discarded.

(71) "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded, including waxed paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications for multiuse utensils in ARM 37.110.212 and 37.110.213.

(72) "Smooth" means food contact surfaces or nonfood contact surfaces that are easily cleanable and free of breaks, open seams, cracks, chips, pits, and similar imperfections, including floors, walls, or ceilings that have an even or level surface with no roughness or projections that make it difficult to clean.

(73) "Support animal" means a trained animal, such as a seeing eye dog, that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.

(74) "Tableware" means eating, drinking, and serving utensils for table use, such as flatware, which includes knives, forks, and spoons; and hollowware, which includes bowls, cups, serving dishes, tumblers and plates.

(75) "Temperature measuring device" means a thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

(76) "Temporary food service establishment" means a food service establishment that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

(77) "Utensil" means a food contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; and food temperature measuring devices.

(78) "Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this subchapter if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

(79) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

(80) "Water supply" means a safe, accessible, and adequate source of water that meets requirements in Title 75, chapter 6, MCA and ARM Title 17, chapter 38 applicable to public water systems.

(81) "Whole muscle intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.204 FOOD SUPPLIES** (1) Food must be free from adulteration or other contamination and must be safe for human consumption. Food must be obtained from sources that comply with all laws relating to food and food labeling which include, but are not limited to, laws of the federal food and drug administration (FDA); environmental protection agency (EPA), United States department of agriculture (USDA), Montana department of livestock; Montana department of agriculture; and the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA. The use of food in hermetically sealed containers that was not prepared in a licensed food manufacturing establishment is prohibited. Food prepared in a private home may not be used or offered for human consumption in a licensed food service establishment.

(2) Fluid milk and fluid milk products used or served must be pasteurized and must meet grade A quality standards. Dry milk and dry milk products must be made from pasteurized milk and milk products.

(3) Fresh and frozen shucked shellfish (oysters, clams or mussels), must be packed in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number. Shell stock and shucked shellfish must be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams or mussels) must be identified by an attached tag which states the name and address of the original shell stock processor, the kind and quantity of shell stock and the interstate certification number issued by the state or foreign shellfish control agency. Shell stock tags or labels must be retained for 90 days from the date the container is emptied. Molluscan shellfish that are recreationally caught must not be received for sale or service.

(4) Only grade B eggs or better with shell intact without cracks, or pasteurized liquid, frozen, or dry eggs or dry egg products must be used.

(5) Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under ARM 37.110.207(8)(b) must be obtained from a supplier that freezes the fish or must be frozen on the premises as specified in ARM 37.110.207(8)(b).

(6) Fish may not be received for sale or service unless they are commercially and legally caught and harvested.

(7) Game animals and exotic species may be received for sale or service if raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction. The inspection of game animals and exotic species must include an antemortem and postmortem examination by a regulatory authority as provided in 81-9-230, MCA.

(8) Ice for use as a food or a cooling medium must be made from drinking water which complies with the requirements in ARM 37.110.217. After use as a cooling medium, ice may not be used as food.

(9) Receiving temperature of refrigerated, potentially hazardous food must be 41°F (5°C) or below unless otherwise required by law.

(10) Potentially hazardous food that is labeled frozen and shipped frozen by a food processing plant must be received frozen. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

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**37.110.206 FOOD STORAGE AND PROTECTION** (1) Food must be stored as follows to prevent potential contamination:

(a) Food must be stored in a clean, dry location where it is not exposed to contamination and is at least 6 inches (15 centimeters) above the floor.

(b) Food in packages and working containers may be stored less than 6 inches (15 centimeters) above the floor if it is stored on case lot handling equipment, such as dollies, racks, or pallets.

(c) Pressurized beverage containers; food in waterproof containers, such as bottles or cans in cases; and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

(d) Food may not be stored in toilet rooms; dressing rooms; garbage rooms; mechanical rooms; under sewer lines that are not shielded to intercept potential drips; under leaking water lines, including leaking automatic fire sprinkler heads; under lines on which water has condensed; under open stairwells; or under other sources of contamination.

(e) Food packages must be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

(f) Working containers holding food or food ingredients that are removed from their original packages, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, must be identified with the common name of the food. The labeling must be on the container or on a nondetachable lid. Those containers holding food that can be readily and unmistakably recognized, such as dry pasta, need not be identified.

(g) Packaged food may not be stored in direct contact with water or undrained ice if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the water or ice.

(h) Whole raw fruits or vegetables, cut raw vegetables such as celery or carrot sticks, cut potatoes, and tofu may be immersed in ice or water that is at a safe temperature.

(i) Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

(2) Packaged and unpackaged food must be protected from cross-contamination by:

(a) cleaning and sanitizing equipment and utensils as specified under ARM 37.110.215;

(b) storing food removed from its original container or package in a clean and sanitized covered container. Covers must be impervious and nonabsorbent, except that clean laundered linens or napkins may be used for lining or covering containers of bread or rolls. Quarters or sides of meat or whole and uncut processed meats may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat;

(c) cleaning hermetically sealed containers of food of visible soil before opening;

(d) storing damaged, spoiled, or recalled products being held for credit, redemption, or return in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles;

(e) separating fruits and vegetables, before they are washed as specified under ARM 37.110.207(3) from ready-to-eat food;

(f) separating raw animal foods during storage, preparation, holding, and display from raw ready-to-eat food, including other raw animal food such as fish for sushi or molluscan shellfish; other raw ready-to-eat food, such as vegetables; and cooked ready-to-eat food;

(g) separating types of raw animal foods from each other, such as beef, fish, lamb, pork, and poultry, during storage, preparation, holding, and display by any of the following methods:

(i) using separate equipment for each type;

(ii) arranging raw animal products by cooking temperature, with those products requiring lower cooking temperatures at the top and those products requiring higher cooking temperatures at the bottom;

(iii) arranging each type of food in equipment so that cross-contamination of one type with another is prevented; or

(iv) preparing each type of food at different times or in separate areas.

(3) Enough conveniently located refrigeration facilities or effectively insulated facilities must be provided to assure the maintenance of potentially hazardous food at 41°F (5°C) during storage except as specified in ARM 37.110.203(61). Each refrigerated facility storing potentially hazardous food must be provided with a numerically scaled indicating temperature measuring device, accurate to ±3°F (1.5°C), located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording temperature measuring devices, accurate to ±3°F (1.5°C) may be used in lieu of indicating temperature measuring devices.

(4) Frozen food must be kept frozen.

(5) Enough conveniently located hot food storage facilities must be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food must be provided with a numerically scaled indicating temperature measuring device, accurate to  $\pm 3^{\circ}\text{F}$  ( $1.5^{\circ}\text{C}$ ) located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording temperature measuring devices, accurate to  $\pm 3^{\circ}\text{F}$  ( $1.5^{\circ}\text{C}$ ) may be used in lieu of indicating thermometers. Where it is impractical to install temperature measuring devices on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product temperature measuring device must be available and used to check internal food temperature.

(6) The internal temperature throughout potentially hazardous foods requiring hot storage must be  $135^{\circ}\text{F}$  ( $57.2^{\circ}\text{C}$ ) or above except during necessary periods of preparation. Potentially hazardous food to be transported must be held at a temperature of  $135^{\circ}\text{F}$  ( $57.2^{\circ}\text{C}$ ) or above unless maintained in accordance with (3) and (4) of this rule.

(7) In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the regulatory authority. Upon receiving notice of this occurrence, the regulatory authority shall take whatever action that it deems necessary within its statutory authority to protect the public health. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.207 FOOD PREPARATION (1) Sinks used for the preparation of foods:

(a) must be cleaned and sanitized as required by ARM 37.110.215 immediately before beginning the preparation of the food; and

(b) may not be used for hand washing or waste water disposal.

(2) Food employees shall adhere to the requirements in ARM 37.110.210 in the preparation of food.

(3) Raw fruits and vegetables must be thoroughly washed in potable water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form. Fruits and vegetables may be washed by using chemicals approved by the EPA. Any sink used to wash, prepare, store, or soak food must be indirectly connected to the sewer through an airgap.

(4) The following are requirements for the destruction of organisms of public health concern:

(a) Raw animal foods such as eggs, fish, poultry, meat, and foods containing these raw animal foods, must be cooked to heat all parts of the food as measured by temperature measuring devices for the specified times listed below:

<u>Item</u>	<u>Temperature</u>	<u>Time</u>
Fish and meat	145°F (63°C)	for 15 sec
Shell eggs individually ordered for immediate service	145°F (63°C)	for 15 sec
Shell eggs prepared for other than individual order for immediate service	155°F (68°C)	for 15 sec
Pork products	145°F (63°C)	for 15 sec
Comminuted (ground) beef, pork and fish, exotic game, and injected meats	145°F (63°C)	for 3 min
	150°F (66°C)	for 1 min
	155°F (68°C)	for 15 sec
(Choose any one)	158°F (70°C)	for < 1 sec
Poultry, wild game, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites	165°F (74°C)	for 15 sec

(b) Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham must be cooked:

(i) in an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature;

<u>Oven type</u>	<u>Roast size: under 10 pounds</u>	<u>over 10 pounds</u>
Still dry oven	350°F (177°C)	250°F (121°C)
Convection oven	325°F (163°C)	250°F (121°C)
High humidity (>90% for 1 hour); and	250°F (121°C)	250°F (121°C)

(ii) as specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

<u>Cooking temperature</u>	<u>holding time</u>
130°F (54°C)	121 minutes
132°F (56°C)	77 minutes
134°F (57°C)	47 minutes
136°F (58°C)	32 minutes
138°F (59°C)	19 minutes
140°F (60°C)	12 minutes
142°F (61°C)	8 minutes
144°F (62°C)	5 minutes
145°F (63°C)	3 minutes

(c) Subsections (4)(a) and (b) do not apply to raw animal foods such as eggs, fish, poultry, meat, and foods containing these raw or partially cooked animal foods, that are served or offered for sale in a ready-to-eat form upon consumer request.

(d) A raw or undercooked whole muscle intact beef steak may be served or offered for sale in a ready-to-eat form if:

(i) the food service establishment serves a population that is not a highly susceptible population; and

(ii) the steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above, and a cooked color change is achieved on all external surfaces.

(e) Fruits and vegetables that are cooked for hot holding must be cooked to a temperature of 135°F (57.2°C).

- (5) Raw animal foods cooked in a microwave oven shall be:
  - (a) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
  - (b) covered to retain surface moisture;
  - (c) heated to a temperature of at least 165°F (74°C) in all parts of the food; and
  - (d) allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.
- (6) Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus may be served at any temperature.
- (7) The cooling of potentially hazardous food must be accomplished in the following manner:
  - (a) Cooked potentially hazardous food must be cooled as a continuous process:
    - (i) from 135°F (57.2°C) to 70°F (21°C) within 2 hours; and
    - (ii) from 70°F (21°C) to 41°F (5°C), or below, within 4 hours, or 45°F (7°C) or below as provided in ARM 37.110.203(61).
  - (b) Potentially hazardous food must be cooled to 41°F (5°C) or below, except as specified in ARM 37.110.203(61), within 4 hours if prepared from ingredients at ambient temperatures, such as reconstituted foods and canned tuna.
  - (c) A potentially hazardous food received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier must be cooled to 41°F (5°C) or below, or 45°F (7°C) or below, as provided in ARM 37.110.203(61) or to a temperature specified on the manufacturer's label, within 4 hours.
  - (d) Cooling must be accomplished in accordance with the time and temperature criteria specified in (4)(a) through (c) of this rule using one or more of the following methods based on the type of food being cooled:
    - (i) placing the food in shallow pans;
    - (ii) separating the food into smaller or thinner portions;
    - (iii) using rapid cooling equipment;
    - (iv) stirring the food in a container placed in an ice water bath;
    - (v) using containers that facilitate heat transfer;
    - (vi) adding ice as an ingredient; or
    - (vii) other effective methods.

(e) When placed in cooling or cold holding equipment, food containers in which food is being cooled must be arranged in the equipment to provide maximum heat transfer through the container walls and must be loosely covered. However, food may be uncovered if it is protected from overhead contamination during the cooling period to facilitate heat transfer from the surface of the food.

(8) Reheating for hot holding must be done as follows:

(a) Except as specified in (4)(b) through (e), potentially hazardous food that is cooked, cooled, and reheated for hot holding must be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) for 15 seconds.

(b) Potentially hazardous food reheated in a microwave oven for hot holding must be reheated so that all parts of the food reach a temperature of at least 165°F (74°C) and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.

(c) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the plant, must be heated to a temperature of at least 140°F (60°C) for hot holding.

(d) Reheating for hot holding must be done rapidly and the time the food is between the temperature 41°F and 165°F may not exceed 2 hours.

(e) Remaining unsliced portions of roasts of beef that are cooked as specified under ARM 37.110.207(4)(b) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under ARM 37.110.207(4)(b).

(9) The following are approved methods of parasite destruction by freezing:

(a) Except as specified in (8)(b) of this rule, raw, raw-marinated, partially cooked, or marinated-partially cooked fish other than molluscan shellfish that is served in ready-to-eat form must be frozen throughout to a temperature of:

(i) -4°F (-20°C) or below for 168 hours (7 days) in a freezer; or

(ii) -31°F (-35°C) or below for 15 hours in a blast freezer.

(b) If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (bluefin tuna, southern), *Thunnus obesus* (bigeye tuna), or *Thunnus thynnus* (bluefin tuna, northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified in (8)(a) of this rule.

(10) Potentially hazardous food may not be held at temperatures above 45°F (7°C) for refrigerated food, or below 135°F (57.2°C) for heated food, for more than:

(a) 4 hours, including the time needed for preparation for cooking; or

(b) the time specified in the cooling criteria in (7) of this rule.

(11) Potentially hazardous foods must be thawed:

(a) in refrigerated units at a temperature not to exceed 41°F (5°C), or as specified in ARM 37.110.203(61);

(b) under potable running water of a temperature of 70°F (22°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow for a period of time that does not allow thawed portions of ready-to-eat food to rise above 45°F (5°C), or as specified in (9) of this rule;

(c) in a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) as part of the conventional cooking process.

(12) Food must be protected from:

(a) contamination that may result from the addition of:

(i) unsafe or unapproved food or color additives; and

(ii) unsafe or unapproved levels of approved food and color additives;

(b) application of sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B-1; or

(c) service or selling of food specified in (11)(b) of this rule that is treated with sulfiting agents before receipt by the food service establishment, except that grapes need not meet this subsection. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1986 MAR p. 1076, Eff. 6/27/86; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.208 FOOD DISPLAY AND SERVICE** (1) Cold potentially hazardous food must be kept at an internal temperature of 41°F (5°C), or as specified in ARM 37.110.203(61), or below, and hot potentially hazardous food must be kept at an internal temperature of 135°F (57.2°C) or above during display and service, except that rare roast beef shall be held for service at a temperature of at least 130°F (55°C).

(2) Ice for consumer use must be dispensed only by food employees with scoops, tongs, or other ice-self-dispensing utensils or through automatic self service ice-dispensing equipment. Ice-dispensing utensils must be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles must be stored in a way that protects them from contamination. Ice storage bins shall be drained through an air gap. Liquid water drain lines may not pass through an ice machine or ice storage bin unless the tubes are properly shielded or separated from the potable ice.

(3) Food must be protected from contamination by equipment, utensils, and wiping cloths by:

(a) preventing contact with wiping cloths that do not meet the requirements in ARM 37.110.215(6) through (8);

(b) preventing contact with surfaces of utensils and equipment that are not cleaned and sanitized;

(c) ensuring utensils are stored properly during pauses in food preparation or dispensing, as follows:

(i) except as specified in (3)(b), in the food with their handles above the top of the food and the container;

(ii) in food that is not potentially hazardous with their handles above the top of the food in containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(iii) in running water of sufficient velocity to flush particulates to the drain, if the utensils are used with moist food such as ice cream or mashed potatoes;

(iv) in a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or

(v) cleaning, sanitizing, and air drying between uses.

(4) In equipment that dispenses or vends liquid food or ice in unpackaged form:

(a) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food must be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food.

(b) The delivery tube, chute, and orifice must be protected from manual contact and be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(i) located in an outside area that does not afford the protection of an enclosure against rain, windblown debris, insects, rodents, and other contaminants; and

(ii) available for self-service during hours when it is not under the full-time supervision of a food employee.

(c) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment must be designed to prevent contact with the lip contact surface of glasses or cups that are refillable.

(5) Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption must be operated and maintained to ensure that:

(a) water used with fish other than molluscan shellfish does not flow into the molluscan tanks;

(b) the safety and quality of the shellfish as they were received are not compromised by use of the tank; and

(c) the identity of the source of the shell stock is retained as specified in ARM 37.110.204(3).

(6) Date marking and disposition of ready-to-eat potentially hazardous food must be handled in the following manner:

(a) Refrigerated, ready-to-eat, potentially hazardous food prepared and held for more than 24 hours in a food establishment must be clearly marked at the time of preparation to indicate the "sell by" date, "best if used by" date, or the date by which the food must be consumed which is, including the day of preparation:

(i) 7 calendar days or less from the day that the food is prepared, if the food is maintained at 41°F (5°C) or less; or

(ii) 4 calendar days or less from the day the food is prepared, if the food is maintained between 42° and 45°F (5.5° and 7°C).

(b) A container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food manufacturing establishment must be clearly marked to indicate the date by which the food must be consumed:

(i) 7 calendar days or less after the original container is opened, if the food is maintained at 41°F (5°C) or less; or

(ii) 4 calendar days or less from the day the original container is opened, if the food is maintained between 42°F and 45°F (5.5°C and 7°C).

(c) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control that is activated at a temperature of:

(i) 41°F (5°C) or below must be discarded if not sold within 7 days; or

(ii) between 42°F and 45°F (5.5°C and 7°C) must be discarded if not sold within 4 days.

(d) The requirements in (6)(a) and (b) of this rule do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(e) Subsection (6)(b) of this rule does not apply to whole, unsliced portions of a cured and processed food product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.

(7) Time is allowable as a public health control.

(a) Time only, rather than time in conjunction with temperature, may be used as the public health control for a working supply of potentially hazardous food before cooking or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, if the following requirements are met:

(i) the food is marked or otherwise identified with the time within which it must be cooked, served, or discarded;

(ii) the food is served or discarded within 4 hours from the time when the food is removed from temperature control;

(iii) food in unmarked containers or packages, or for which the time expires, is discarded; and

(iv) written procedures are maintained in the food establishment and made available to the regulatory authority upon request to ensure compliance with (7)(a)(i) through (iii) of this rule and ARM 37.110.206 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

(b) Once time is implemented as a control measure for potentially hazardous food, no other measures may be substituted.

(8) Food on display for self-service by the consumer must be protected from contamination by:

(a) use of packaging; counter, service line, or salad bar food guards; display cases; or similarly effective means;

(b) providing suitable utensils or effective dispensing methods for self-service operations for ready-to-eat foods;

(c) protecting condiments by using:

(i) dispensers that are designed to provide protection;

(ii) food display units provided with proper dispensing utensils;

(iii) original containers designed for dispensing; or

(iv) individual packages or portions; and

(d) not allowing food that has been served or sold and in the possession of a consumer and that is unused or returned by the consumer to be offered again as food for human consumption. However, food that is not potentially hazardous, such as crackers and condiments, in an unopened original package and maintained in sound condition may be reserved or resold to that population that is not classified as highly susceptible;

(e) not allowing self-service consumers to use soiled tableware, including single-service articles, to obtain additional food from display and serving equipment. However, cups and glasses may be reused if refilling is a contamination free process. A sign similar to the one shown must be posted to inform the consumer of this requirement: "CONSUMER: Please obtain clean tableware before obtaining additional food." (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.209 FOOD TRANSPORTATION (1) During transportation, food and food utensils must be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, food must meet the requirements of this subchapter relating to food protection and food storage. (History: 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.210 FOOD EMPLOYEES** (1) No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, diarrheal illness or acute gastrointestinal illness or an acute respiratory infection, shall work in a food service establishment in any capacity in which there is likelihood of such person contaminating food or food contact surfaces with pathogenic organisms or transmitting disease to other persons. Food employees experiencing persistent sneezing, coughing or runny nose that causes discharges from the eyes, nose or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

(2) Food employees and other authorized persons shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food service establishment.

(3) Food employees shall clean their hands in a hand washing facility that conforms to the requirements in ARM 37.110.221.

(4) Food employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm running water after any of the following activities:

(a) immediately before engaging in food preparation, including working with exposed food, clean equipment and utensils and unwrapped single-service and single-use articles;

(b) during food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;

(c) when switching between working with raw foods and working with ready-to-eat foods;

(d) after handling soiled equipment or utensils;

(e) after coughing, sneezing, using a handkerchief or disposable tissue;

(f) after using the toilet room;

(g) after eating, drinking or using tobacco;

(h) after touching bare human body parts other than clean hands and clean, exposed portions of arms;

(i) after caring for or handling support animals; or

(j) after engaging in other activities that contaminate the hands.

(5) If used, chemical hand sanitizers must:

(a) have active antimicrobial ingredients that are listed as safe and effective for application to human skin as an antiseptic handwash pursuant to the U.S. food and drug administration's regulations for over-the-counter health-care antiseptic drug products; and

(b) have only components that are:

(i) regulated for the intended use as food additives as specified in 21 CFR 178; or

(ii) generally recognized as safe for the intended use in contact with food within the meaning of the federal Food, Drug, and Cosmetic Act, section 201(s); and

(c) be applied only to hands and arms that are cleaned with a cleaning compound in a hand washing facility by thoroughly rubbing together the surfaces of their lathered hands and arms and thoroughly rinsing with clean water;

(d) if a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified in (5)(a) through (c) of this rule, use must be:

(i) followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

(ii) limited to situations that involve no direct contact with food by the bare hands;

(e) a chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100mg/L chlorine.

(6) Food employees in a food establishment shall adhere to the following requirements to prevent contamination of food:

(a) minimize contact with exposed ready-to-eat food with bare hands by using utensils such as deli tissue, spatula, tongs, single-use gloves or dispensing equipment;

(b) minimize contact of bare hands and arms with exposed food that is not in a ready-to-eat form;

(c) use single-use gloves for only one task, such as working with ready-to-eat food or with raw animal food; use them for no other purpose; and discard them when they are damaged or soiled or when interruptions occur in the food operation;

(d) use clean slash-resistant gloves with ready-to-eat foods that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface or are covered with a smooth, durable, nonabsorbent glove, or single-use glove;

(e) use a utensil only once to taste food that is to be sold or served.

(7) Food employee practices must conform to the following requirements:

(a) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(b) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

(c) While preparing food, food employees may not wear jewelry on their arms and hands except a simple wedding band.

(d) Food employees shall wear clean outer clothing. If uniforms are not provided, clean outer coverings must be worn over clothing or the employee shall change to clean clothing if their clothing is soiled.

(e) Food employees may eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils and linens; unwrapped single-service and single-use articles; or other items needing protection cannot occur. However, a food employee may drink from a closed beverage container if the container is handled to prevent contamination of the food employee's hands, the container; exposed food; clean equipment, utensils and linens; and unwrapped single-service and single-use articles.

(f) Food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair. The hair restraints must be designed and worn to effectively keep hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single service and single-use articles.

(i) Subsection (7)(f) does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles.

(8) Persons unnecessary to the food establishment operation may not be allowed in the food preparation, food storage, or warewashing areas, except as allowed by the person in charge if steps are taken to ensure that exposed food, clean equipment, utensils and linens; and unwrapped single-service and single-use articles are protected from contamination. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

Rule 11 reserved

**37. 110. 212 MATERIALS FOR EQUIPMENT AND UTENSILS**

(1) Equipment and utensils must be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

(2) Cast iron may not be used for utensils or food contact surfaces of equipment except as a surface for cooking. However, cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.

(3) If solder is used, it must be composed of safe materials and be corrosion resistant. Solder and flux containing lead in excess of 0.2% may not be used on surfaces that contact food.

(4) Use of wood is limited as follows:

(a) Except as specified in (4)(b) through (e) of this rule, wood and wood wicker may not be used as a food contact surface.

(b) Hard maple or an equivalently hard, close-grained wood may be used for:

(i) cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and non-single-service chopsticks; and

(ii) wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F (110°C) or above.

(c) Whole uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(d) If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:

(i) untreated wood containers; or

(ii) treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800.

(e) Wood may be used for single-service articles, such as chopsticks, stirrers and ice cream spoons.

(5) Cutting surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and sanitized, or be discarded if they are not capable of being sanitized.

(6) Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping and distortion, and that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods are permitted for repeated use.

(7) Mollusk and crustacea shells may be used only once as a serving container. Further re-use of such shells for food service is prohibited.

(8) Re-use of single-service articles is prohibited.

(9) Ceramic, china, crystal utensils, and decorative utensils, such as hand painted ceramic or china, that are used in contact with food must be lead-free or contain levels of lead not exceeding the following limits:

Lead Content in Utensils

<u>Utensil Category</u>	<u>Description</u>	<u>Maximum Lead</u>
hot beverage mugs	coffee mugs	0.5 mg/L
large hollowware	bowls > 1.16 Qt/[1.1L]	1 mg/L
small hollowware	bowls < 1/16 Qt/[1.1L]	2.0 mg/L
flat utensils	plates, saucers	3.0 mg/L

(10) Copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine; and may not be used for a fitting or tubing installed between a backflow prevention device and a carbonator.

(11) Galvanized metal may not be used for utensils or food contact surfaces of equipment that are used for beverages, acidic food, and moist food. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.213 EQUIPMENT AND UTENSIL DESIGN AND FABRICATION**

(1) All equipment and utensils, including plastic-ware, must be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.

(2) Food contact surfaces must be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food contact surface only if the surface is heated, such as in grills, griddle tops, and skillets. Threads must be designed to facilitate cleaning; ordinary "v" type threads are prohibited in food contact surfaces, except that in equipment such as ice makers or hot oil cooking equipment and hot oil filtering systems, such threads must be minimized.

(3) Equipment containing bearings and gears requiring unsafe lubricants must be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food contact surfaces. Only food-safe lubricants must be used on equipment designed to receive lubrication of bearings and gears on or within food contact surfaces.

(4) Tubing and cold plates conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice provided such tubing is fabricated from safe materials, is grommated at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units must not pass through the ice machine or the ice storage bin unless the tubes are properly shielded or separated from the potable ice.

(5) Sinks and drainboards must be self-draining.

(6) Unless designed for in-place cleaning, food contact surfaces must be accessible for cleaning and inspection:

- (a) without being disassembled;
- (b) by disassembling without the use of tools; or
- (c) by easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.

(7) Equipment intended for in-place cleaning must be designed and fabricated so that:

(a) cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen;

(b) cleaning and sanitizing solutions will contact all interior food contact surfaces; and

(c) the system is self-draining or capable of being completely evacuated.

(8) Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods must have sealed electrical wiring, switches, and connections.

(9) Temperature measuring devices are required in all food establishments and must meet the following requirements:

(a) may not have sensors or stems constructed of glass, except that temperature measuring devices with glass sensors or stems that are encased in a shatterproof coating, such as candy thermometers, may be used;

(b) must have a numerical scale, printed record, or digital readout in increments no greater than 2°F (1°C);

(c) must be designed to be easily readable;

(d) devices that are used to check food temperatures must be scaled only in Celsius or scaled only in Fahrenheit or dually scaled in Celsius and Fahrenheit and must be accurate to  $\pm 2^\circ\text{F}$  ( $\pm 1^\circ\text{C}$ );

(e) devices that are used to measure ambient air and water temperature that are scaled in Celsius or dually scaled in Celsius and Fahrenheit must be designed to be easily readable and accurate to  $\pm 3^\circ\text{F}$  ( $\pm 1.5^\circ\text{C}$ ) at the use range;

(f) in a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device must be located to measure the air temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit;

(g) cold or hot holding equipment used for storing or displaying potentially hazardous food must be designed to include and must be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display; and

(h) subsection (9) does not apply to equipment such as heat lamps, cold plates, bainsmarie, steam tables, insulated food transport containers, and salad bars when the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment.

(10) Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning must be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and must be of such material and in such repair as to be easily maintained in a clean and sanitary condition. Unfinished wood is not acceptable as a non-food contact surface in areas utilized for food preparation, equipment, or utensil washing.

(11) Hoods must be installed at or above all commercial type deep fat fryers, broilers, fry grills, steam-jacketed kettles, hot-top ranges, ovens, barbecues, rotisseries, dishwashing machines, and similar equipment which produce comparable amounts of steam, smoke, grease, or heat.

(12) Ventilation hoods and devices must be designed to prevent grease or condensation from collecting on walls and ceilings, and from dropping into foods or onto food contact surfaces.

(13) Filters or other grease extracting equipment must be readily removable for cleaning and replacement if not designed to be cleaned in place.

(14) Hoods, filters, hood fire extinguishing equipment and other ventilation system items must be kept clean.

(15) Equipment that was installed in a food service establishment prior to the effective date of this rule, and that does not fully meet all of the design and fabrication requirements of this rule, will be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food contact surfaces are non-toxic. Replacement equipment and new equipment acquired after the effective date of this rule must meet the requirements of this subchapter. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; AMD, 1986 MAR p. 1076, Eff. 6/27/86; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.214 EQUIPMENT INSTALLATION AND LOCATION

(1) General equipment, including ice makers and ice storage equipment, may not be located under exposed or unprotected sewer lines or water lines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads.

(2) Equipment that is placed on tables or counters, unless easily movable, must be sealed to the table or counter or elevated on legs to provide at least a 4-inch clearance between the table or counter and equipment and shall be installed to facilitate the cleaning of the equipment and adjacent areas.

(3) Equipment is easily movable within the meaning of (2) of this rule if:

(a) it is small and light enough to be moved easily by one person; and

(b) it has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

(4) Floor-mounted equipment, unless easily movable, must be:

(a) sealed to the floor;

(b) installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or

(c) elevated on legs to provide at least a 6-inch clearance between the floor and equipment, except that vertically mounted floor mixers may be elevated to provide at least a 4-inch clearance between the floor and equipment if no part of the floor under the mixer is more than 6 inches from cleaning access.

(5) Unless sufficient space is provided for easy cleaning between, behind and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings must not be more than 1/32 inch; or if exposed to seepage, the equipment must be sealed to the adjoining equipment or adjacent walls or ceilings.

(6) Aisles and working spaces between units of equipment and walls must be unobstructed and of sufficient width to permit food employees and other authorized persons to perform their duties readily without contamination of food or food contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies must be positioned to provide accessibility to working areas. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.215 EQUIPMENT AND UTENSIL CLEANING AND SANITATION

(1) Tableware must be washed, rinsed, and sanitized after each use.

(2) To prevent cross contamination, kitchenware and food contact surfaces of equipment must be washed, rinsed, and sanitized after each use and following any interruption of operations during which time contamination may have occurred.

(3) Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production-line basis, utensils and the food contact surfaces of equipment must be washed, rinsed, and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.

(4) The food contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens must be cleaned at least once a day. This requirement does not apply to hot oil cooking equipment and hot oil filtering systems. The food contact surfaces of all cooking equipment must be kept free of encrusted grease deposits and other accumulated soil.

(5) Non-food contact surfaces of equipment must be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

(6) Cloths used for wiping food spills on tableware, such as plates or bowls being served to the consumer, must be clean, dry and used for no other purpose.

(7) Moist cloths used for wiping food spills on food contact and nonfood contact surfaces of equipment must be laundered as required, stored in a chemical sanitizer and maintain sanitizing strength at the point of use.

(8) Dry or moist cloths that are used with raw animal foods must be kept separate from cloths used for other purposes, and the moist cloths used with raw animal foods must be kept in a separate sanitizing solution.

(9) Sponges may not be used in contact with cleaned and sanitized or in-use food contact surfaces.

(10) For manual washing, rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments must be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink must be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments must be washed manually or cleaned through pressure spray methods.

(11) Drainboards or easily movable dish tables of adequate size must be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and must be located so as not to interfere with the proper use of the dishwashing facilities.

(12) Equipment and utensils must be preflushed or pre-scraped and, when necessary, presoaked to remove food particles and soil.

(13) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing must be conducted in the following manner:

(a) Sinks must be cleaned prior to use;

(b) Equipment and utensils must be thoroughly washed in the first compartment with a hot detergent solution that is kept clean;

(c) Equipment and utensils must be rinsed free of detergent and abrasives with clean water in the second compartment;

(d) Equipment and utensils must be sanitized in the third compartment according to one of the methods included in (14)(a) through (g) of this rule.

(14) The food contact surfaces of all equipment and utensils must be sanitized by:

(a) immersion for at least 30 seconds in clean, hot water at a temperature of at least 170°F (77°C);

(b) immersion for at least 30 seconds in a clean solution containing at least 100 parts per million but not more than 200 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75°F (24°C);

(c) immersion for at least 30 seconds in a clean solution containing at least 12.5 parts per million but not more than 25 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F (24°C);

(d) immersion for at least 30 seconds in a clean solution containing no more than 200 parts per million of quaternary ammonium compound used by following manufacturer's instructions;

(e) immersion in a clean solution containing any other chemical sanitizing agent approved by the EPA that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at a temperature of at least 75°F (24°C) for 30 seconds;

(f) treatment with steam free from unsafe materials or additives in the case of equipment too large to sanitize by immersion, but in which steam can be confined and raises the surface temperature to 160°F (72°C) or above; or

(g) rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under (14)(a) through (e) of this rule in the case of equipment too large to sanitize by immersion.

(15) When hot water is used for sanitizing, the following facilities must be provided and used:

(a) an integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C);

(b) a numerically scaled indicating temperature measuring device, accurate to  $\pm 3^{\circ}\text{F}$  ( $1.5^{\circ}\text{C}$ ), convenient to the sink for frequent checks of water temperature; and

(c) dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(16) When chemicals are used for sanitization, they must not have concentrations higher than the maximum permitted in (14), and a test kit or other device that accurately measures the parts per million concentration of the solution must be used.

(17) Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices must be properly installed and maintained in good repair. Machines and devices must be operated in accordance with manufacturers' instructions, and utensils and equipment placed in the machine must be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, must be properly installed and maintained.

(18) The pressure of final rinse water supplied to spray-type dishwashing machines must not be less than 15 nor more than 25 pounds per square inch measured in the water line immediately adjacent to the final rinse control valve. A 1/4 inch IPS valve must be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.

(19) Machine or water line mounted numerically scaled indicating temperature measuring devices, accurate to  $\pm 3^{\circ}\text{F}$  ( $1.5^{\circ}\text{C}$ ), must be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

(20) Rinse water tanks must be protected by baffles, curtains, or other effective means to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines must be accurately timed to assure proper exposure times in wash and rinse cycles in accordance with manufacturers' specifications attached to the machines.

(21) Drainboards must be provided and be of adequate size for the proper handling of soiled utensils prior to washing and of cleaned utensils following sanitization and must be so located and constructed so as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of soiled utensils or the use of easily movable dish tables for the storage of clean utensils following sanitization.

(22) Equipment and utensils must be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of the dishwashing machine operation. Equipment and utensils must be placed in racks, trays, or baskets, or on conveyors, in a way that food contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

(23) Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used, provided:

(a) The temperature of the wash water may not be less than  $120^{\circ}\text{F}$  ( $49^{\circ}\text{C}$ );

(b) The wash water must be kept clean.

(c) Chemicals added for sanitization purposes shall be automatically dispensed;

(d) Utensils and equipment must be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration;

(e) The chemical sanitizing rinse water temperature may not be less than  $75^{\circ}\text{F}$  ( $24^{\circ}\text{C}$ ) or less than the temperature specified by the machine's manufacturer;

(f) Chemical sanitizers used must be approved by the EPA;

(g) A test kit or other device that accurately measures the parts per million concentration of the solution must be available and used.

(24) Machines using hot water for sanitizing may be used provided that wash water and pumped rinse water must be kept clean and water must be maintained at not less than the temperature stated below:

(a) Single-tank, stationary-rack, dual-temperature machine:

Wash temperature 150°F (66°C)

Final rinse temperature 180°F (83°C)

(b) Single-tank, stationary-rack, single-temperature machine:

Wash temperature 165°F (74°C)

Final rinse temperature 165°F (74°C)

(c) Single-tank, conveyor machine:

Wash temperature 160°F (72°C)

Final rinse temperature 180°F (83°C)

(d) Multi-tank, conveyor machine:

Wash temperature 150°F (66°C)

Pumped rinse temperature 160°F (72°C)

Final rinse temperature 180°F (83°C)

(e) Single-tank, pot, pan, and utensil washer (either stationary or moving rack):

Wash temperature 140°F (60°C)

Final rinse temperature 180°F (83°C)

(25) Machines using hot water for sanitizing must achieve a utensil surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator.

(26) All dishwashing machines must be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

(27) After sanitization, all equipment and utensils must be air dried.

(28) Food service establishments using a dishwashing machine shall provide a manual dish washing facility described in ARM 37.110.215(10) or provide a plan acceptable to the regulatory authority to adequately clean, rinse and sanitize utensils, in case the dishwashing machine is not functional. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.216 EQUIPMENT AND UTENSIL STORAGE** (1) Cleaned and sanitized equipment and utensils must be handled in a way that protects them from contamination. Spoons, knives, and forks must be touched only by their handles. Cups, glasses, bowls, plates and similar items must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

(2) Cleaned and sanitized utensils and equipment must be stored at least 6 inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other contaminants. The food contact surfaces of fixed equipment must also be protected from contamination. Equipment and utensils may not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.

(3) Utensils must be air dried before being stored or must be stored in a self-draining position.

(4) Glasses and cups must be stored inverted. Other stored utensils must be covered or inverted, wherever practical. Facilities for the storage of knives, forks, and spoons must be designed and used to present the handle to the food employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations must protect these articles from contamination and present the handle of the utensil to the consumer.

(5) Single-service articles must be stored at least 6 inches above the floor in closed cartons or containers which protect them from contamination and may not be placed under exposed sewer lines or water lines, except for automatic fire protection sprinkler heads.

(6) Single-service articles must be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.

(7) Single-service knives, forks, and spoons packaged in bulk must be inserted into holders or be wrapped by an employee who has washed his hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks and spoons are prewrapped or prepackaged, holders must be provided to protect these items from contamination and present the handle of the utensil to the consumer.

(8) The storage of food equipment, utensils or single-service articles in toilet rooms or vestibules is prohibited. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.217 WATER SUPPLY** (1) Enough potable water for the needs of the food service establishment must be provided from a source constructed and operated in accordance with Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapters 1 and 2, applicable to public water and wastewater systems.

(2) All potable water not provided directly by pipe to the food service establishment from the source must be transported in a bulk water transport system in accordance with ARM Title 17, chapter 38, subchapter 5, Water Hauled for Cisterns.

(3) Bottled and packaged potable water must be obtained from a source that complies with (1) above and must be handled and stored in a way that protects it from contamination. Bottled and packaged potable water must be dispensed from the original container.

(4) Water under pressure at the required temperatures must be provided to all fixtures and equipment that use water.

(5) Steam used in contact with food or food contact surfaces must be free from any unsafe materials or additives.

(6) A reservoir that is used to supply water to a device such as a produce mister must be:

(a) maintained in accordance with manufacturer's specifications; and

(b) cleaned in accordance with manufacturer's specifications or according to the following procedures, whichever is more stringent:

(i) cleaning at least once a week by:

(A) draining and complete disassembly of the water and aerosol contact parts;

(B) brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

(C) flushing the complete system with water to remove the detergent solution and particulate accumulation; and

(D) rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution.

(7) The department hereby adopts and incorporates by reference ARM Title 17, chapter 38, subchapters 1, 2 and 5, which are Montana department of environmental quality rules setting forth, respectively, maximum contaminant levels allowed in public drinking water supplies, requirements for the equipment and operation of systems for hauling water for cisterns, and plan review requirements for public water and wastewater systems. Copies of ARM Title 17, chapter 38, subchapters 1, 2 and 5 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.

(8) Food service establishments with existing water systems that will not be changed or modified in their uses may not be subject to some or all of the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38. These water systems must comply with the applicable laws and approval conditions that were in place at the time of the systems' approval. Also, these systems must comply with current monitoring, reporting, and drinking water quality requirements. Information on any of the requirements of this rule may be obtained from the Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.218 SEWAGE** (1) All sewage, including liquid waste, must be disposed of by a public sewerage system or by a sewage treatment and disposal system constructed and operated in accordance with Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1, plans for public water and wastewater systems. Non-water-carried sewage disposal facilities are prohibited, except as permitted by ARM 37.110.236(10) pertaining to temporary food service establishments or as permitted by the regulatory authority in remote areas or because of special situations.

(2) The department hereby adopts and incorporates by reference ARM Title 17, chapter 38, subchapter 1 which is a set of Montana department of environmental quality rules setting forth plan review requirements for public water and wastewater systems. A copy of ARM Title 17, chapter 38, subchapter 1 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) Food service establishments with existing sewage systems that will not be changed or be modified in their uses may not be subject to some or all of the provisions of Title 75, chapter 6, MCA and ARM Title 17, chapter 38. These systems comply with the applicable state and local laws and approval conditions that were in place at the time of the systems' approval. The Montana department of environmental quality may have other laws and regulations that apply. Information or any of the requirements of this rule may be obtained from the Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.219 PLUMBING** (1) Plumbing must be installed and maintained in a manner which prevents cross-connections between the potable water supply and any non-potable or questionable water supply nor any source of pollution through which the potable water supply might become contaminated.

(2) A non-potable water system is permitted only for purposes such as air conditioning and fire protection and only if the system is installed according to law and the non-potable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any non-potable water system must be durably identified so that it is readily distinguishable from piping that carries potable water.

(3) The potable water system must be installed to preclude the possibility of backflow. Devices must be installed to protect against backflow and back siphonage at all fixtures and equipment where an air gap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose may not be attached to a faucet unless a backflow prevention device is installed.

(4) If used, grease traps must be located to be easily accessible for cleaning.

(5) If used, garbage disposals must be installed to preclude potential cross-connections between sewer and potable water systems. Garbage disposals must be maintained in a clean and sanitary manner at all times.

(6) There may not be a direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; AMD, 1986 MAR p. 1076, Eff. 6/27/86; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37. 110. 220 TOILET FACILITIES** (1) Toilet facilities must be provided for food employees and other authorized persons. These toilet facilities must be conveniently located and readily accessible to food employees and other authorized persons during all times the establishment is in operation. Conveniently located as related to toilet facilities located within 200 feet by a normal pedestrian route of all locations of the food service operation and not more than one floor-to-floor flight of stairs.

(2) Food employees, other authorized persons and customers may use the same toilet facilities provided that patrons may use them without entering the food storage, food preparation, or food service areas or the dishwashing or utensil storage areas of the establishment.

(3) When customer facilities are provided, they must be maintained in good repair and be kept clean at all times.

(4) Food service establishments which must use privy type toilets must be evaluated on an installation-by-installation basis.

(5) Toilets and urinals must be designed to be easily cleanable.

(6) Toilet fixtures must be kept clean and in good repair.

(7) Toilet rooms must be completely enclosed, and must have tight-fitting, self-closing doors. Such doors may not be left open except during cleaning or maintenance. If vestibules are provided, they must be kept in a clean condition and good repair.

(a) The lack of doors on toilets serving large numbers of people such as sports arenas must be evaluated on a case-by-case basis.

(8) A supply of toilet tissue in a wall-hung or protected container must be provided at each toilet at all times. Easily cleanable receptacles must be provided for waste materials. Such receptacles must be emptied at least once a day, and more frequently when necessary to prevent excessive accumulation of waste material.

(9) All toilet rooms must be vented to the outside. In addition, mechanical ventilation must be provided in new or newly remodeled toilet rooms. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; AMD, 1986 MAR p. 1076, Eff. 6/27/86; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.221 HAND WASHING FACILITIES** (1) Hand washing facilities must be constructed, installed, and maintained to facilitate cleaning.

(2) Customers are prohibited from entering the food preparation, food service, food storage or utensil washing areas to use hand washing facilities.

(3) Hand washing facilities for food employees must be located within the area or areas where food is prepared or served and in utensil washing areas.

(a) The number and location of hand washing facilities in the areas will be determined by the convenience of the hand washing facility to the food employees.

(4) Hand washing facilities located outside and immediately adjacent to toilet rooms may also serve the food preparation, food service or utensil washing areas if convenient.

(5) Service sinks and utensil washing sinks may be used as hand washing facilities if properly located, equipped, maintained, and continuously available for hand washing.

(6) Sinks used for food preparation or curbed cleaning sinks used for mop water disposal may not be used for hand washing.

(7) Each hand washing facility must be provided with warm running water by means of a mixing valve or combination faucet. Any self-dispensing, slow-closing, or metering faucet used must be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited.

(8) A supply of hand-cleansing soap or detergent must be available at each hand washing facility.

(9) A supply of disposable towels in a wall-hung or protected container, a continuous towel system that supplies the user with a clean towel, or a hand drying device providing heated air must be conveniently located near each hand washing facility. Common towels are prohibited. When disposable towels are used, easily cleanable waste receptacles must be conveniently located near the hand washing facility.

(10) Hand washing facilities, soap dispensers, hand drying devices and all related fixtures must be kept clean and in good repair. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; AMD, 1986 MAR p. 1076, Eff. 6/27/86; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.222 GARBAGE AND REFUSE (1) Garbage and refuse must be kept in durable, easily cleanable, insect proof and rodent proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers, and they may be used for storage inside the food service establishment.

(2) Containers used in food preparation and utensil washing areas must be kept covered after they are filled or when not in active use.

(3) Containers stored outside the establishment, and dumpsters, compactors and compactor systems must be easily cleanable, must be provided with tight-fitting lids, doors or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs must be in place at all times, except during cleaning.

(4) There must be a sufficient number of containers to hold all the garbage and refuse that accumulates.

(5) Soiled containers must be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, must be provided and used for washing containers. Liquid waste from compacting or cleaning operations must be disposed of as sewage.

(6) Garbage and refuse on the premises must be stored in a manner to make them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

(7) Garbage or refuse storage rooms, if used, must be constructed of easily cleanable, nonabsorbent, washable materials; be kept clean; be insect-proof and rodent-proof; and be large enough to store the garbage and refuse containers that accumulate.

(8) Outside storage areas or enclosures must be large enough to store the garbage and refuse containers that accumulate and must be kept clean. Garbage and refuse containers, dumpsters and compactor systems located outside must be stored on or above a smooth surface of nonabsorbent materials such as concrete or machine-laid asphalt that is kept clean and maintained in good repair.

(9) Garbage and refuse must be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.

(10) Where garbage or refuse is burned on the premises, it must be done by controlled incineration that prevents the escape of particulate matter in accordance with the Montana Clean Air Act, 75-2-101, et seq., MCA and associated administrative rules. Areas around incineration facilities must be clean and orderly. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.223 INSECT AND RODENT CONTROL (1) Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises must be utilized. The premises must be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(2) Devices that are used to electrocute flying insects must be designed to have escape-resistant trays. Devices that are used to electrocute flying insects and that may impel insects or insect fragments or to trap insects by adherence must be installed so that:

(a) the devices are not located within 5 feet of a food preparation area; and

(b) dead insects and insect fragments are prevented from being impelled onto or falling on exposed food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles.

(3) Dead or trapped birds, insects, rodents and other pests must be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

(4) Rodent bait must be contained in covered, tamper-resistant bait stations.

(5) Tracking powder pesticide may not be used in a food service establishment. A nontoxic tracking powder such as talcum or flour may be used, but may not contaminate food, equipment, utensils, linens, and single-service articles.

(6) Openings to the outside must be effectively protected against the entrance of rodents. Outside openings must be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors must be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside must be tight-fitting and free of breaks. Screening material must not be less than 16 mesh to the inch. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

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**37. 110. 225 FLOORS** (1) Floors and floor coverings of all food preparation, food storage, and utensil washing areas, and the floors of all walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms and vestibules must be constructed of smooth, durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. Anti-slip floor covering in areas necessary for safety reasons may be used.

(2) Carpeting, if used as a floor covering, must be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food preparation, equipment washing and utensil washing areas where it would be exposed to large amounts of grease and water, in food storage areas, and toilet room areas where urinals or toilet fixtures are located.

(3) The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

(4) Properly installed, trapped floor drains must be provided in floors that are water-flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors must be constructed only of sealed concrete, terrazzo, ceramic tile or similar materials, and must be graded to drain.

(5) Mats and duckboards must be of nonabsorbent, grease resistant materials and of such size, design, and construction as to facilitate their being easily cleaned. Duckboards may not be used as storage racks.

(6) In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile or similar flooring materials, and where water-flush cleaning methods are used, the junctures between walls and floors must be covered and sealed. In all other cases, the juncture between walls and floors may not present an open seam of more than 1/32 inch.

(7) Exposed utility service lines and pipes must be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.226 WALLS AND CEILINGS** (1) Walls and ceilings, including doors, windows, skylights, and similar closures, must be maintained in good repair.

(2) The walls, including nonsupporting partitions, wall coverings, and ceilings of walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules must be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations must be finished and sealed to provide an easily cleanable surface.

(3) Studs, joists, and rafters may not be exposed in walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules. If exposed in other rooms or areas, they must be finished to provide an easily cleanable surface.

(4) Exposed utility service lines and pipes must be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes may not be unnecessarily exposed on walls or ceilings in walk-in refrigerating units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules.

(5) Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings must be easily cleanable and must be maintained in good repair.

(6) Wall and ceiling covering materials must be attached and sealed so as to be easily cleanable. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.227 CLEANING PHYSICAL FACILITIES** (1) Cleaning of floors and walls, except emergency cleaning of floors, must be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials must be kept clean. Floors and walls must be cleaned by dustless methods, such as vacuum cleaning, wet cleaning, or the use of dust arresting sweeping compounds with brooms.

(2) In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain must be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid wastes. The use of hand washing facilities, utensil washing or equipment washing, or food preparation sinks for this purpose is prohibited.

(3) When service sinks are used as a hand washing facility, such sinks must be located to prevent potential contamination of food or food contact surfaces of equipment and utensils. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1986 MAR p. 1076, Eff. 6/27/86; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.228 LIGHTING** (1) Permanently fixed artificial light sources must be installed to provide at least 50 foot-candles of light on all food preparation surfaces and at equipment or utensil washing work levels.

(2) Permanently fixed artificial light sources must be installed to provide, at a distance of 30 inches from the floor:

(a) at least 20 foot-candles of light in utensil and equipment storage areas and in lavatory and toilet areas; and

(b) at least 10 foot-candles of light in walk-in refrigerating units, dry food storage areas, and in all other areas. This requirement includes dining areas during cleaning operations.

(3) Shielding to protect against broken glass falling onto food must be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities, and facilities where utensils and equipment are cleaned and stored.

(4) Infrared or other heat lamps must be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.229 VENTILATION (1) All rooms must have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes. When vented to the outside, the system may not create an unsightly, harmful or unlawful discharge.

(2) Intake and exhaust air ducts must be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

(3) In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors or fumes originate must be mechanically vented to the outside. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; AMD, 1986 MAR p. 1076, Eff. 6/27/86; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.230 DRESSING ROOMS AND LOCKER AREAS (1) If food employees and other authorized persons routinely change clothes within the establishment, rooms or areas must be designated and used for that purpose. These designated rooms or areas may not be used for food preparation, storage or service, or for utensil washing or storage.

(2) Enough lockers or other suitable facilities must be provided and used for the orderly storage of food employee and other authorized person's clothing and other belongings. Lockers or other suitable facilities must be located in the designated dressing rooms, in food storage rooms, or areas containing only completely packaged food or packaged single-service articles. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.231 TOXIC MATERIALS (1) There shall be present in food service establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents. This rule does not apply to packaged poisonous or toxic materials that are for retail sale.

(2) Containers of poisonous or toxic materials and personal care items must bear a legible manufacturer's label.

(3) Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies must be clearly and individually identified with the common name of the material.

(4) Poisonous or toxic materials consist of the following categories:

(a) pesticides;

(b) detergents, sanitizers, related cleaning or drying agents, caustics, acids, polishes, and other chemicals;

(c) substances necessary for the operation and maintenance of the establishment such as nonfood-grade lubricants and personal care items that may be deleterious to health; and

(d) substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

(5) All poisonous or toxic materials must be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials may not be stored above food, food equipment, utensils or single-service articles, except that this requirement does not prohibit the convenient availability of detergents or sanitizers at utensil or dishwashing stations as long as storage requirements are followed as outlined on the manufacturer's label or a material safety data sheet, and containers are properly labeled.

(6) Sanitizers, cleaning compounds or other compounds intended for use on food contact surfaces may not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to food employees or other persons.

(7) Poisonous or toxic materials may not be used in a way that contaminates food, equipment, or utensils; in a way that constitutes a hazard to food employees or other persons; or in a way that is contrary to the manufacturers' labeling. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food. Drying agents used in conjunction with sanitization must contain only components that are approved by the EPA.

(8) Only those medicines necessary for the health of food employees and other authorized persons are allowed in a food establishment. Medicines for food employees and other authorized person's use must be labeled as specified in ARM 37.110.231(2) and located to prevent the contamination of food, equipment, utensils, linens, and single-service articles. This rule does not apply to medicines that are stored or displayed for retail sale.

(9) First-aid supplies must be stored in a way that prevents them from contaminating food and food contact surfaces. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1986 MAR p. 1076, Eff. 6/27/86; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37. 110. 232 PREMISES** (1) Food service establishments and all parts of property used in connection with their operations must be kept free of litter.

(2) The walking and driving surfaces of all exterior areas of food service establishments must be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces must be graded to prevent pooling and must be kept free of litter.

(3) Only articles necessary for the operation and maintenance of the food service establishment must be stored on the premises.

(4) The traffic of unnecessary persons through the food preparation and utensil washing areas is prohibited.

(5) Any operation of a food service establishment may not be conducted in any room used as living quarters, sleeping quarters or other non-food operations. Food service operations must be separated from any living or sleeping quarters by complete partitioning and with solid self-closing doors.

(6) Laundry facilities in a food service establishment must be restricted to the washing and drying of linens, cloths, uniforms and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer must be provided and used.

(a) Separate rooms must be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

(b) A mechanical washer and dryer is not required if on-premise laundering is limited to wiping cloths. The wiping cloths may be laundered in a warewashing or service sink that is cleaned before and after use. If air-dried, the cloths must be dried in a location that prevents the contamination of food, equipment, utensils and linens.

(7) Clean clothes and linens must be stored in a clean place and protected from contamination until used.

(8) Soiled clothes and linens must be stored in non-absorbent containers or washable laundry bags until removed for laundering.

(9) Maintenance and cleaning tools such as brooms, mops, vacuum cleaners and similar equipment must be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and must be stored in an orderly manner for the cleaning of that storage location.

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(10) Except as specified in (11), live animals are prohibited from the premises of a food establishment.

(11) Live animals may be allowed in the following situations if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles will not occur:

(a) edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(b) patrol dogs accompanying police or security officers in offices and dining rooms, sales and storage areas, and sentry dogs running loose in outside fenced areas;

(c) in areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist a food employee or other person who is disabled, are controlled by the disabled food employee or disabled person and are not allowed to be on seats or tables;

(d) live or dead fish bait that is stored so that contamination of food, clean equipment, utensils and linens, and unwrapped single-service and single-use articles will not occur; and

(e) pets in the common dining areas of group residences at times other than during meals if:

(i) a partition of self-closing doors separate the common dining areas from food storage or food preparation areas;

(ii) condiments, equipment and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) dining areas including tables, countertops and similar surfaces are effectively cleaned before the next meal service.

(History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

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**37.110.236 TEMPORARY FOOD SERVICE ESTABLISHMENTS** (1) A temporary food service establishment must comply with the requirements of this subchapter, except as otherwise provided in this rule. The regulatory authority may impose additional requirements to protect against health hazards related to the conduct of the temporary food service establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this subchapter.

(2) Subsections (3) through (14) of this rule are applicable whenever a temporary food service establishment is permitted, under the provisions of (1) of this rule, to operate without complying with all the requirements of this subchapter.

(3) Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, must be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs or fish is prohibited. This prohibition does not apply to any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of this subchapter, is obtained in individual servings, is stored at a temperature of 41°F (5°C) or below, or as specified in ARM 37.110.203(61), or at a temperature of 135°F (57.2°C) or above in facilities meeting the requirements of this subchapter, and is served directly in the unopened container in which it was packaged.

(4) Ice that is consumed or that contacts food must be made under conditions meeting the requirements of this subchapter. The ice must be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice must be held in these bags until it is dispensed in a way that protects it from contamination.

(5) Equipment must be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.

(6) Food contact surfaces of equipment must be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment must be provided, as necessary, to prevent contamination.

(7) All temporary food service establishments without effective facilities for cleaning and sanitizing tableware must provide only single-service articles for use by the consumer.

(8) Enough potable water that complies with ARM 37.110.217(3) must be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for hand washing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

(9) Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches may not be stored in direct contact with ice.

(10) All sewage, including liquid waste, must be disposed of by a lawfully constructed and operated public sewage disposal system, by approved portable toilet units with acceptable final waste disposal, or by properly constructed pit privies.

(11) A convenient hand washing facility must be available for food employee hand washing. This facility must consist of, at least, warm running water, soap, and individual paper towels.

(12) Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept in good repair. Dirt or gravel, when graded to drain, may be used as subflooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings or other suitable materials effectively treated to control dust.

(13) Ceilings must be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas must be constructed in a way that prevents the entrance of insects. Doors to food preparation areas must be solid or screened and must be self-closing. Screening material used for walls, doors, or windows must be at least 16 mesh to the inch.

(14) Counter service openings must not be larger than necessary for the particular operation conducted. These openings must be provided with tight-fitting solid or screened doors or windows or must be provided with fans installed and operated to restrict the entrance of flying insects. Counter service openings must be kept closed, except when in actual use. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

Rule 37 reserved

**37.110.238 LICENSES** (1) No person shall operate a food service establishment who does not have a valid license issued by the department. Only a person who complies with the requirements of this subchapter shall be entitled to receive or retain such a license. Licenses are not transferable. A valid license must be posted in every food service establishment.

(2) Any person desiring to operate a food service establishment shall make written application for a license on forms provided by the department. Such application must include the name and address of each applicant, the location and type of the proposed food service establishment.

(3) Prior to approval of an application for a license, the regulatory authority or the local health department sanitarians shall inspect the proposed food service establishment to determine compliance with the requirements of this subchapter.

(4) The department will issue a license to the applicant if an inspection by a state or local health officer or sanitarian reveals that the proposed food service establishment complies with all applicable requirements of this subchapter.

(5) The department may, after providing opportunity for hearing, revoke a license for serious or repeated violations of any of the requirements of this subchapter or for interference with the department or other authorized persons in the performance of duty.

(6) Prior to revocation, the department will notify, in writing, the licensee of the specific reason(s) for which the license is to be revoked. The notice will further provide for the licensee the opportunity to request an administrative hearing in front of the department within 10 business days after the receipt of the notice. If no request for hearing is filed within the 10-day period, the revocation of the license becomes final.

(7) The licensee may submit to the department an acceptable plan of correction within 10 business days after receiving the department's notice of revocation. Such an acceptable plan of correction will be a bar to canceling the license.

(8) A notice provided for in this rule is properly served when it is delivered to the holder of the license, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the license. A copy of the notice will be filed in the records of the department.

(9) The hearing provided for in this rule will be conducted by the department pursuant to Title 2, chapter 4, subchapter 6, MCA of the Montana Administrative Procedure Act regarding contested cases and ARM 37.5.117. The department shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or order considered in the hearing. The department will furnish a written report of the hearing decision to the licensee.

(10) Whenever a revocation of a license has become final, the holder of the revoked license may make written application for a new license.

(11) Obtaining the license referred to in (1) of this rule does not relieve the applicant from satisfying applicable requirements from other federal, state or local agencies. These may include, but are not limited to:

- (a) building code permits and inspections;
- (b) fire and life safety inspections;
- (c) private or public water supply system or sewage treatment systems permits or inspections; or
- (d) occupational health and safety requirements. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, 50-50-201, 50-50-204, 50-50-205, 50-50-206, 50-50-207, 50-50-208, 50-50-209, 50-50-210, 50-50-211, 50-50-212, 50-50-213, 50-50-214 and 50-50-215, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.239 INSPECTIONS** (1) The local health officer or a sanitarian or sanitarian-in-training employed by or contracted with the local board of health shall perform an inspection of each food service establishment within the jurisdiction of the local board of health at least twice every 12 months unless that schedule is modified by signed agreement with the department. Additional inspections of the food service establishment must be performed as often as necessary for the enforcement of this subchapter.

(2) The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department, after proper identification, must be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with this subchapter and must be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

(3) Whenever an inspection of a food service establishment is made, the findings must be recorded on an inspection form authorized by the department. The inspection report form must summarize the requirements of this subchapter. Inspection remarks must be written to reference the item violated and must state the correction to be made. A copy of the completed inspection report form must be furnished to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form is a public document that must be made available for public review or distribution upon payment of copying costs to any person upon request.

(4) The completed inspection report form must specify a reasonable period of time for the correction of the violations found and correction of the violations must be accomplished within the period specified, in accordance with the following provisions:

(a) All critical item violations must be corrected as soon as possible, but in any event, within 10 days following inspection. Critical items include the following:

(i) ARM 37.110.203(61); 37.110.204(1); 37.110.206(2), (4) and (7); 37.110.207(4), (5), (7), (8), (9), and (11); 37.110.208(1), (3), (6), (7) and (8)(d); 37.110.210(1), (4), (6) and (7)(e); 37.110.212(10) and (11); 37.110.213(9)(a); 37.110.215(1), (2), (3), (13)(d), (14), (15), (23), (24), (25), and (28); 37.110.217(1), (3) and (6); 37.110.218(1); 37.110.219(1), (2), (3) and (6); 37.110.221(3); 37.110.223(1), (4) and (5); 37.110.231(1), (2), (3), (5), (6), (7), (8) and (9); 37.110.232(10); 37.110.236(3), (8), (10) and (11); 37.110.240(4); 37.110.242(1); 37.110.252(1) and (2); 37.110.253(5); 37.110.254; 37.110.255; 37.110.256(3) and (4); and 37.110.257(3)(c) and (d);

(b) All other violations which are the remaining food establishment rules not mentioned in (4)(a) and (4)(a)(ii) must be corrected as soon as possible, but in any event, by the time of the next routine inspection;

(c) In the case of temporary food service establishments, all violations must be corrected within 24 hours.

(5) The inspection report must state that failure to comply with any time limits for corrections of critical item violations may result in cessation of food service operations.

(6) In the case of critical items, the local health officer, sanitarian, or sanitarian-in-training must conduct a follow-up inspection to check for correction compliance and record the results on an inspection form authorized by the department. (History: Sec. 50-50-103, 50-50-301, 50-50-305, MCA; IMP, Sec. 50-50-301, 50-50-302, 50-50-305, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1994 MAR p. 2941, Eff. 11/11/94; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37. 110. 240 EXAMINATION AND CONDEMNATION OF FOOD** (1) The owner or person in charge shall allow the regulatory authority to examine and sample food within the establishment at all reasonable times as is necessary for the enforcement of this subchapter and 50-31-509 and 50-31-510, MCA.

(2) If the regulatory authority finds or has probable cause to believe that food it has examined or sampled is adulterated or misbranded, it shall detain or embargo the food by affixing a tag to it which prohibits its removal or use until permission is given by the regulatory authority or a court.

(3) If the regulatory authority finds that the food is not adulterated or misbranded, it shall authorize its release; however, if it finds that it is adulterated or misbranded, it shall petition a justice court, city court, or district court for an order condemning the food and authorizing its destruction.

(4) If the regulatory authority finds that a perishable food is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the regulatory authority shall immediately condemn or destroy the article or in any other manner render the article unsalable as human food. (History: Sec. 50-50-103, 50-50-303, MCA; IMP, Sec. 50-50-103, 50-31-509, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.241 REVIEW OF PLANS (1) Whenever a food service establishment is constructed or remodeled and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling or conversion must be submitted to the regulatory authority for review and approval before construction, remodeling or conversion is begun. The plans and specifications must indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this subchapter. A food service establishment may not be constructed or remodeled, and any existing building may not be converted into a food service establishment, except in accordance with plans and specifications approved by the regulatory authority.

(2) An existing building may not be used as a food service establishment and the use of one type of establishment may not change to another type of establishment without the prior approval of the regulatory authority.

(3) When a proposal to use an existing building as an establishment or to change the use from one type of establishment to another involves structural modification, plans meeting the requirements of (1) of this rule must be submitted to the regulatory authority for review and approval. If no structural modification is involved, the regulatory authority may waive the requirement for submission of plans if an inspection by the regulatory authority indicates that the proposed establishment meets the requirements of this subchapter.

(4) Persons operating food establishments are reminded that the plans and specifications must also be approved by the local or state building official having jurisdiction.

(5) Whenever plans and specifications are required by (1) of this rule to be submitted to the department, the regulatory authority shall inspect the food service establishment prior to the start of operations, to determine compliance with the approved plans and specifications and with the requirements of this subchapter. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; AMD, 1985 MAR p. 928, Eff. 7/12/85; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.242 SUSPECTED DISEASE TRANSMISSION: PROCEDURE**

(1) When the regulatory authority has reasonable cause to suspect possible disease transmission by a food employee of a food service establishment, it may secure a morbidity history of the suspected food employee or make any other investigation as indicated and shall take appropriate action in accordance with ARM 16.28.301. The department may require any or all of the following measures:

(a) the immediate exclusion of the food employee from employment in food service establishments;

(b) restriction of the food employee's services to some area of the establishment where there would be no danger of transmitting disease;

(c) adequate medical and laboratory examination of the food employee and of other authorized persons and of his and their body discharges. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, 50-50-105, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.243 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or indicate in writing to the department that each food establishment within the jurisdiction of the local board will be inspected at least twice every 12 months as specified in ARM 37.110.239(1).

(2) Requests for cooperative agreements must contain the current risk analysis information required by the department.

(3) All local boards of health must meet the following criteria regardless of the existence or absence of a cooperative agreement:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in standardized food service inspection techniques. The department is responsible for making training and standardization review available on a periodic basis;

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) If a preliminary inspection is required under ARM 37.110.241, the food service establishment is inspected for compliance with this subchapter within 10 days after receiving notice from the department or the establishment that such a preliminary inspection is needed;

(ii) Each food service establishment within the jurisdiction of the local board of health is inspected at least twice every 12 months, or on the schedule specified in a signed agreement with the department;

(iii) All the requirements of ARM 37.110.239 are complied with;

(iv) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter-September 30; 2nd quarter-December 31; 3rd quarter-March 31; 4th quarter-June 30) on forms approved by the department;

(v) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(4) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (3)(a) and (b) above may result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department. (History: Sec. 50-50-305, MCA; IMP, Sec. 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

Rules 44 through 50 reserved

**37.110.251 SEPARABILITY** (1) If any provision of this subchapter is held invalid, all other valid provisions remain in effect. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1979 MAR p. 677, Eff. 7/13/79; TRANS & AMD, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.252 HIGHLY SUSCEPTIBLE POPULATION** (1) In a food service establishment whose primary function is to serve a highly susceptible population as defined in ARM 37.108.203, the following food items may not be served:

- (a) unpasteurized juice and dairy products;
- (b) raw animal food such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;
- (c) partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and

- (d) raw seed sprouts in a ready-to-eat form.

(2) Pasteurized shell eggs or pasteurized liquid, frozen or dry eggs or egg products must be substituted for raw shell eggs in the preparation of:

- (a) foods such as caesar salads, hollandaise or bearnaise sauces, mayonnaise, egg nogs, ice creams, and egg-fortified beverages; and

- (b) recipes in which more than one raw shell egg is broken and the eggs are combined.

(3) Subsection (2) of this rule does not apply if:

- (a) the raw eggs are combined immediately before cooking for one consumer's serving at a single meal; are cooked as specified in ARM 37.110.207(4)(a); and are served immediately, as in the case of an omelet, souffle or scrambled eggs; or

- (b) the raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as cake, muffins or bread. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.253 VARIANCES (1) A food service establishment may request a variance to waive or modify requirements of this subchapter by petitioning the local health authority.

(2) The local health authority may grant a variance by modifying or waiving the requirements of this chapter if in the opinion of the local health authority a health hazard will not result from the variance.

(3) If a variance is granted, the local health authority may require any of the following information for its records on the food establishment:

(a) a statement by the petitioner of the proposed variance from this subchapter's requirements, citing the relevant rule numbers;

(b) a rationale by the petitioner explaining how the potential public health hazards addressed by the relevant rules will be alternatively addressed by the proposal; and

(c) a hazard analysis and critical control point plan (HACCP) from the petitioner requesting the variance that includes the information required for a HACCP plan and its relevance to the variance requested.

(4) The petitioner may ask for approval from the department if the local health authority denies the variance, or the local health authority does not exist or is absent. For department approval, the petitioner shall submit the information required in (3)(a) through (c) of this rule.

(5) The recipient of a variance must demonstrate to the regulatory authority conformance with approved procedures through compliance with the HACCP plan, if one is required, or procedures that are submitted and approved as a basis for the variance. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR p. 3201, Eff. 11/23/00.)

**37. 110. 254 SUBMISSION OF A HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) PLAN** (1) A HACCP plan must be submitted to the regulatory authority for the following processes:

- (a) smoking or curing food;
- (b) using food additives as a method of food preservation rather than as a method of flavor enhancement; or
- (c) packaging food using a reduced-oxygen packaging unless the regulatory authority finds that a barrier to *Clostridium botulinum* exists.

(2) For reduced-oxygen packaging that contains no barrier to *Clostridium botulinum*, the food service establishment shall follow an approved HACCP plan that contains the information specified under ARM 37. 110. 255 and that does the following:

- (a) identifies the food to be packaged;
- (b) limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

- (i) has an aw of 0. 91 or less;
  - (ii) has a pH of 4. 6 or less;
  - (iii) is a meat product cured at a food processing plant regulated by the U. S. department of agriculture using a combination of nitrites, nitrates, and salt that at the time of processing consists of 120 mg/L or higher concentration of sodium nitrite and a brine concentration of at least 3. 50% and is received in an intact package; or

- (iv) is a food with a high level of competing organisms such as raw meat or raw poultry;

- (c) specifies methods for maintaining food at 41°F (5°C) or below;

- (d) describes how the packages must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to maintain the food at 41°F (5°C) or below and to discard the food within 14 calendar days of its packaging if it is not served for on-premises consumption;

(e) limits the shelf life to no more than 14 calendar days from packaging to consumption or to the original manufacturer's "sell by" or "use by" date, whichever occurs first;

(f) includes operational procedures that do the following:

(i) prohibits contacting food with bare hands;

(ii) identifies a designated preparation area;

(iii) identifies a method of minimizing cross-contamination of raw foods with ready-to-eat foods;

(iv) restricts access to processing equipment to only trained food employees familiar with the potential hazards of the operation; and

(v) delineates cleaning and sanitization procedures for food-contact surfaces;

(g) describes the training program that ensures that the individual responsible for the reduced-oxygen packaging operation understands the following:

(i) concepts required for a safe operation;

(ii) equipment and facilities; and

(iii) procedures specified in (2)(f) of this rule and 37.110.255(1)(d).

(h) except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced-oxygen packaging method. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR p. 3201, Eff. 11/23/00.)

**37. 110. 255      CONTENTS OF A HACCP PLAN**      (1)      A food establishment that is required to submit a HACCP plan must develop, within 30 days of receiving notice of the requirement, a HACCP plan that contains the following information:

(a) a categorization of the types of potentially hazardous foods that are specified in the menu, such as soups and sauces, salads, and solid foods in bulk, such as meat roasts, or of other foods that are specified by the regulatory authority;

(b) a flow diagram by specific food or category identifying critical control points and providing information on the following:

(i) ingredients, materials, and equipment used in the preparation of that food; and

(ii) formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;

(c) food employee and supervisory training plan that addresses the food safety issues of concern;

(d) a statement of standard operating procedures for the plan under consideration, including clearly identifying the following:

(i) each critical control point;

(ii) the critical limits for each critical control point;

(iii) the method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;

(iv) the method and frequency for the person in charge to verify routinely that the food employee is following standard operating procedures and monitoring critical control points;

(v) action to be taken by the person in charge if the critical limits for each critical control point are not met; and

(vi) records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and

(e) additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.256 MOBILE FOOD SERVICE (1) Mobile food services must comply with all requirements of this subchapter unless otherwise specified in this rule.

(2) Mobile food services must provide only single-service articles for use by the consumer.

(3) Mobile food services requiring a water system must have a potable water system under pressure and must be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and hand washing, in accordance with ARM 37.110.217. Additionally:

(a) The water inlet must be located so that it will not be contaminated by waste discharge, road dust, oil, or grease; be kept capped unless being filled; and be provided with a transition connection of a size or type that will prevent its use for any other service;

(b) All water distribution pipes or tubing must be constructed and installed in accordance with ARM 37.110.219.

(4) If liquid waste results from the operation of a mobile food service, the waste must be stored in a retention tank that is of at least 15% larger capacity than the water supply tank. Additionally:

(a) Liquid waste may not be discharged from the retention tank when the mobile food service is in motion;

(b) All connections on the vehicle for servicing mobile food service waste disposal facilities must be of a different size or type than those used for supplying potable water to the unit;

(c) The waste connection must be located lower than the water inlet connection to preclude contamination of the potable water system;

(d) The liquid waste retention tank, where used, must be thoroughly flushed and drained during the servicing operation;

(e) All liquid waste must be discharged to a sanitary sewage disposal system in accordance with ARM Title 17, chapter 38, subchapter 1.

(5) A mobile food service must report as needed to a servicing area for supplies, cleaning and maintenance, unless otherwise allowed by the local health authority.

(6) A mobile food service may have an approved water hauler and a licensed septic pumper service the unit. The approved water hauler and licensed septic pumper must be in compliance with ARM Title 17, chapter 38, the rules of the Montana department of environmental quality.

(7) A mobile food service need not comply with the requirements in ARM 37.110.215 regarding cleaning and sanitizing equipment and utensils, if the mobile food service reports daily to an approved servicing area, and serves:

(a) only food from approved sources, packaged in individual servings, and transported and stored under conditions meeting the requirements of this subchapter; or

(b) beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment.

(8) The local health authority may:

(a) impose additional requirements to protect against health hazards related to the conduct of the mobile food service;

(b) prohibit the sale of some or all potentially hazardous food; or

(c) when no health hazard will result, waive or modify requirements of this subchapter. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR p. 3201, Eff. 11/23/00.)

37.110.257 PUSHCARTS (1) Pushcarts must operate in accordance with ARM 37.110.256.

(2) Additionally, pushcarts must have a servicing area which must include at least an overhead protection for any supplying, cleaning, or servicing operation. Within the servicing area, there must be a location provided for the flushing and drainage of liquid wastes separate from the location provided for potable water servicing and for the loading and unloading of food and related supplies. A servicing area is not required when only packaged food is placed on the pushcart.

(3) The servicing area must be constructed and equipped as follows:

(a) The floor surface of the servicing area must be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and must be maintained in good repair, kept clean, and be graded to drain;

(b) The construction of the walls and ceilings of the servicing area is exempted from the requirements of ARM 37.110.226;

(c) Potable water servicing equipment must be installed according to ARM 37.110.217 and 37.110.219 and must be stored and handled in a way that protects the water and equipment from contamination;

(d) The liquid waste retention tank, where used, must be thoroughly flushed and drained during the servicing operation, and all liquid waste must be discharged to a sanitary sewerage disposal system in accordance with ARM Title 17, chapter 38, subchapter 1. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.258 SEMIPERMANENT FOOD SERVICE ESTABLISHMENT**

(1) Semipermanent food service establishments must comply with this subchapter and ARM 37.110.256(1) through (8).

(2) Additionally, semipermanent food service establishments must be located within 200 feet of a restroom facility for food employees. The restroom facility must be accessible during all hours of operation. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR p. 3201, Eff. 11/23/00.)

**37.110.259 PERISHABLE FOOD VENDING MACHINES**

(1) Perishable food vending machines must comply with all requirements of this subchapter.

(2) Additionally, all foods, beverages and ingredients offered for sale through perishable food vending machines must be manufactured, processed and prepared in a fixed food service establishment that complies with this subchapter or subchapter 3 regarding food manufacturing establishments. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 2000 MAR p. 3201, Eff. 11/23/00.)

## Subchapter 3

## Food Manufacturing Establishments

**37. 110. 301 DEFINITIONS** (1) "Adulterated food." A food shall be deemed "adulterated" if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; if it bears or contains any added poisonous or deleterious substances for which no safe tolerance has been established by regulations, or in excess of such tolerance if one has been established; if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; if it has been processed, prepared, packed, or held under unsanitary conditions, whereby it may have been rendered injurious to health; if it is in whole or in part the product of a diseased animal, or an animal which has died other than by slaughter; if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or as otherwise determined under 50-31-202, MCA.

(2) "Approved" means acceptable to the health authority based on his determination as to conformance with appropriate standards and good public health practice.

(3) "Closed joints" means fitted together snugly leaving no openings large enough to permit the entrance of vermin.

(4) "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the foods, cleaning compounds, and sanitizing solutions which may contact it.

(5) "Easily cleanable" means readily accessible and of such material and finish and so fabricated that residue may be completely removed by normal cleaning methods.

(6) "Employee" means any person working in a food processing establishment who transports food or food containers; who engages in food preparation, cutting, wrapping, or service; or who comes in contact with any food utensils or equipment.

(7) "Equipment" means stoves, ranges, hoods, meatlocks, tables, counters, refrigerators, saws, cutting knives, mixers, grinders, tenderizers, sinks, utensils, washing machines, steam tables, and similar items used in food processing and storage.

(8) "Food," as used in this subchapter, means any raw, cooked, or processed edible substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

(9) "Food contact surfaces" means those surfaces of equipment and utensils with which food or food products normally come into contact, and those surfaces with which food and food products may come in contact and drain, drip, or splash back onto surfaces normally in contact with food or food products.

(10) "Health authority" means the department of public health and human services, local health officer, local sanitarian, or other authorized representative.

(11) "Food processing establishment" means a commercial establishment in which food is processed or otherwise prepared and/or packaged for human consumption, including food manufacturing establishments, meat markets, bakeries, frozen food plants, commercial food processors, or perishable food dealers.

(12) "Misbranded" means the use of any written, printed, or graphic matter upon or accompanying food or containers of food which violates 50-31-203, MCA, the Montana Food, Drug and Cosmetic Act, or any other applicable local, state, and federal labeling requirements.

(13) "Perishable food" means any food of such type or in such condition as may spoil.

(14) "Person" means an individual, partnership, corporation, and association.

(15) "Potentially hazardous food" means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting infectious or toxigenic micro-organisms.

(16) "Safe temperatures," as applied to perishable and potentially hazardous foods, means temperatures of 45°F or below and 140°F or above.

(17) "Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the health authority as being effective in destroying micro-organisms, including pathogens.

(18) "Sealed" means free of cracks or other openings which permit entry or passage of moisture.

(19) "Single-service articles" means cups, containers, lids or closures, plates, trays, knives, forks, spoons, stirrers, paddles, skewers, straws, toothpicks, napkins, doilies, packaging and wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic or other readily destructible materials, and which are intended by the manufacturers and generally recognized by the public as for one usage only, then shall be discarded.

(20) "Wholesome" means in sound condition, clean, free from adulteration and otherwise suitable for use as human food. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37. 110. 302 PRECONSTRUCTION REVIEW (1) Prior to the construction of any establishment or the remodeling or enlarging thereof, each person shall present to the department such plans and specifications for review and approval. Such plans drawn to scale shall include but shall not be limited to floor plan arrangement; floor, wall, and ceiling material; cooling and other equipment specifications; lighting; ventilation; plumbing; electrical facilities; sanitary facilities; and such other information as the department may request in order to ascertain conformity with the applicable requirements. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37. 110. 303 PRELIMINARY INSPECTION (1) All food processing establishments shall comply with all of the following items of sanitation. Before any establishment shall commence serving the public, the owner, or manager thereof shall notify the department or local health officer, sanitarian, or sanitarian-in-training in order that a preliminary inspection may be made to determine whether or not the establishment complies with the following items of sanitation, and no establishment shall open unless there is on display an inspection report indicating satisfactory compliance with all such items. This provision shall also apply to existing establishments whenever the ownership, location, operation, or management of such existing establishment is changed or interrupted. (History: Sec. 50-50-103, 50-50-301 and 50-50-302, MCA; IMP, Sec. 50-50-103, 50-50-301 and 50-50-302, MCA; NEW, Eff. 11/4/73; AMD, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 04 through 09 reserved

37.110.310 FOOD SUPPLIES (1) All food in food processing establishments shall be from sources approved or considered satisfactory by the federal, state, and local inspection enforcement agencies and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. Food from such sources shall have been protected from contamination and spoilage during subsequent handling, packaging and storage and while in transit.

(2) All hermetically sealed food and food products shall have been processed in food processing establishments. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.311 MILK AND MILK PRODUCTS (1) All milk and milk products, including fluid milk, other fluid dairy products and manufactured milk products, shall meet the standards of quality established for such products by the department of livestock. Only grade A pasteurized fluid milk and fluid milk products may be used or offered for sale. Dry milk and milk products may be reconstituted in the establishment if used for cooking purposes only. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73, AMD, 1984 MAR p. 26, Eff. 1/13/84; TRANS; from DHES, 2001 MAR p. 2423.)

37.110.312 FROZEN DESSERTS (1) All frozen desserts such as ice cream, soft frozen desserts, ice milk, sherbets, ices, and mixes shall meet the standards of quality established for such products by the department of livestock. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 13 through 17 reserved

**37.110.318 SHELLFISH** (1) All oysters, clams, and mussels shall have been from sources approved by the health authority; provided, if the source is outside the state, it shall be one which is certified by the applicable state or federal inspection agencies.

(2) Shell stock shall be identified with an official tag giving the name and certificate number of the original shell stock shipper and the kind and quantity of shell stock.

(3) Free and frozen shucked oysters, clams, and mussels shall be packed in non-returnable containers identified with the name and address of the packer, repacker, or distributor and the certificate number of the packer or repacker preceded by the abbreviated name of the state. Shucked shellfish shall be kept in the original container until sold or processed. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.319 MEAT AND MEAT PRODUCTS** (1) All meat and meat products shall have been inspected for wholesomeness under a state and federal regulatory program; provided, the health authority may accept other sources which are in its opinion in compliance with applicable federal, state, and local laws and regulations. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.320 POULTRY AND POULTRY PRODUCTS** (1) All poultry and poultry meat products shall have been inspected for wholesomeness under an official regulatory program; provided, the health authority may accept other sources which are in its opinion satisfactory and which are in compliance with applicable federal, state, and local laws and regulations. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.321 BAKERY PRODUCTS** (1) All bakery products shall have been prepared in a food processing establishment; provided, the health authority may accept other sources which are in its opinion satisfactory and which are in compliance with applicable federal, state and local laws and regulations.

(2) All cream-filled and custard-filled pastries shall have been prepared and handled in accordance with the food protection requirements of this subchapter. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rule 22 reserved

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**37.110.323 EGGS AND EGG PRODUCTS** (1) All eggs and egg products shall have been from approved sources and be in compliance with applicable federal, state and local laws and regulations.

(2) "Checked eggs, " "hatchery rejects, " or other eggs and egg products of lesser quality shall not be used in manufacturing foods or food products. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 24 through 29 reserved

37.110.330 FOOD PROTECTION (1) All food, while being stored, prepared, displayed, or sold in food processing establishments, or transported between such establishments, shall be protected against contamination from dust, flies, rodents, and other vermin; unclean utensils and work surfaces; unnecessary handling, coughs, and sneezes; flooding, drainage, and overhead leakage; and any other source.

(2) Only such poisonous and toxic materials as are required to maintain sanitary conditions and for sanitization purposes may be used or stored in food manufacturing establishments. Poisonous and toxic materials shall be identified, and shall be stored and used only in such manner and under such conditions as will not contaminate food or constitute a hazard to employees or customers.

(3) All wild game shall be separated from commercial meat in the cooling facilities. All hides and wild game trimmings shall be stored separate from commercial meat in such a manner as to preclude contamination, or breeding of flies or vermin. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.331 TEMPERATURE REQUIREMENTS (1) Conveniently located refrigeration facilities and display facilities and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, display, or transportation. Each cold-storage facility used for the storage of perishable food in a non-frozen state shall be provided with an indicating thermometer accurate to  $\pm 2^{\circ}\text{F}$ , located in the warmest part of the facility in which food is stored, and of such type and so situated that the thermometer can be easily and readily observed for reading.

(2) All perishable food shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food shall, except when being prepared, be kept at  $45^{\circ}\text{F}$  or below, or  $140^{\circ}\text{F}$  or above, and, when placed on display for service, shall be kept hot or cold as follows:

(a) If stored hot, the temperature of such food shall be kept at  $140^{\circ}\text{F}$  or above.

(b) If stored cold, such food shall be stored in or on a refrigerated facility which must reduce or maintain the product temperature at  $45^{\circ}\text{F}$  or below.

(c) Chill room (room for aging meat) temperature shall be  $35^{\circ}\text{F}$  within  $2^{\circ}\text{F}$  plus or minus with a tolerance of  $10^{\circ}\text{F}$  after fresh food is put in for chilling.

(d) Sharp freeze rooms and sharp freeze compartments temperatures shall be  $-10^{\circ}\text{F}$  or lower, or temperatures of  $0^{\circ}\text{F}$  for either type of installation after fresh food is put in for freezing.

(e) Locker room temperatures shall be 0°F with a tolerance with 12°F plus.

(f) Frozen food shall be kept at such a temperature so as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of 45°F or below, or under cool, potable running water 70°F or below.

(g) Cooking and smoking shall be conducted so that all portions of the meat or other foods will be held without interruption for at least 10 minutes at 165°F or higher. Following preparation, smoked and cooked meats, etc. must be held at the temperature range of 140°F or higher or 45°F or lower unless processing permits other temperature storage. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.332 FOOD PREPARATION** (1) Convenient and suitable utensils, such as forks, knives, tongs, spoons, or scoops shall be provided and used to minimize handling of food at all points where food is prepared.

(2) Meat salads, poultry salads, potato salad, egg salad, cream-filled pastries, and other potentially hazardous prepared food shall be prepared, preferably from chilled products, with a minimum of manual contact, and on surfaces and with utensils which are clean and which, prior to use, have been sanitized.

(3) Custards, cream fillings, or similar products which are prepared by hot or cold processes, and which are used as puddings or pastry fillings, shall be kept at safe temperatures, except during necessary periods of preparation and service, and shall meet the following requirements as applicable:

(a) Pastry fillings shall be placed in shells, crusts, or other baked goods either while hot (not less than 140°F) or immediately following preparation, if a cold process is used; or

(b) Such fillings and puddings shall be refrigerated at 45°F or below in shallow pans, immediately after cooking or preparation, and held thereat until combined into pastries or served.

(c) All completed custard-filled and cream-filled pastries shall be refrigerated at 45°F or below promptly after preparation, and held thereat pending service. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.333 FOOD STORAGE** (1) Containers of food shall be stored at least 5 inches above the floor, on clean racks, dollies, or other clean surfaces, in such a manner as to be protected from splash and other contamination.

(2) Food not subject to cooking before serving and subject to contamination shall be stored at a safe temperature and in such a manner as to be protected against contamination from food requiring washing or cooking.

(3) Wet storage of packaged food shall be prohibited.

(4) Special lights above meat displays or special wrapping which make the products appear of better quality than they actually are shall not be used. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 34 through 39 reserved

**37. 110. 340 DISPLAY AND SERVICE** (1) Where unwrapped food or food products are placed on display, such displays will be protected against contamination from customers and other sources. The protection shall be effective, easily cleanable, i.e., counter-protector devices, cabinets, display cases, containers or other similar type of protective equipment.

(2) Tongs, forks, spoons, toothpicks, spatulas, scoops, and other suitable utensils shall be provided and shall be used by food demonstration workers to reduce manual contact with food to a minimum. For self-service by customers, similar implements shall be provided.

(3) Spoons, knives, forks, other utensils, etc. shall be stored and used in such a manner as to preclude their contamination and mishandling. Display cases, counters, shelves, and similar areas shall be kept clean. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37. 110. 341 TRANSPORTATION** (1) The requirements for storage, display, and general protection against contamination as contained in this subchapter, shall apply in the transporting of all food from a food processing establishment to another location for service, catering operations, or delivery; and all potentially hazardous food shall be kept at 45°F or below or 140°F or above, during transportation.

(2) During the transportation of food from a food processing establishment, all food shall be covered in containers or completely wrapped or packaged so as to be protected from contamination. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.342 TOXIC MATERIALS** (1) Only those poisonous and toxic materials required to maintain the establishment in a sanitary condition, and for sanitization of equipment and utensils, shall be present in the establishment. No toxic products shall be stored where contamination of food or ingredients can occur. All containers of poisonous and toxic materials shall be prominently and distinctively marked or labeled for easy identification as to contents, hazardous use and an antidote.

(2) When not in use, poisonous and toxic materials shall be stored in cabinets which are used for no other purpose, or in a place which is outside the food storage, food preparation, and cleaned equipment and utensil storage rooms. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All toxic materials should be stored on lower shelves that prevent spillage and leakage onto shelves below.

(3) Bactericides, cleaning compounds, or other compounds intended for use on food contact surfaces shall not be used in such a manner as to leave a toxic residue on such surfaces nor to constitute a hazard to employees or customers.

(4) Poisonous polishing materials shall not be used on equipment or utensils, nor shall it be stored in the food preparation or storage areas of the establishment.

(5) Poisonous compounds, such as insecticides and rodenticides, if present, shall have a distinctive color so as not to be mistaken for food and shall be stored in containers in which the product is legibly identified.

(6) Poisonous materials shall not be used in any way as to possibly contaminate food, equipment, or utensils, nor to constitute other hazards to employees or customers. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 43 through 46 reserved

**37.110.347 EMPLOYEE REQUIREMENTS** (1) No person while affected with a disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, or an acute respiratory infection, shall work in a food service establishment in an area and capacity in which there is a likelihood of transmission of disease to patrons or to fellow employees, either through direct contact or through the contamination of food or food contact surfaces with pathogenic organisms. The manager or person in charge of the establishment shall notify the health authority when any employee of a food processing establishment is known or suspected of having a disease in a communicable form.

(2) All employees shall thoroughly wash their hands and arms with a liquid soap and warm water before starting work, and shall wash hands during work hours as often as may be required to remove soil and contamination, as well as after visiting the toilet room. This is especially important before handling cooked foods likely to be consumed without further heating or cooking. The hands of all employees shall be kept clean while engaged in handling food and food contact surfaces. Employees shall keep their fingernails clean and neatly trimmed. Germicidal or bacteriostatic soaps are strongly recommended for routine hand washing.

(3) The outer garments of all persons, including utensil and equipment washers, engaged in handling food or food contact surfaces, shall be clean. Hair nets, caps, or other effective hair restraints shall be used by employees engaged in the preparation of food to keep hair from falling into food and food contact surfaces. Hair sprays are not acceptable in lieu of one or the other of the above hair restraints.

(4) Employees shall not use tobacco in any form while engaged in food preparation or service, or while in equipment and utensil washing or food preparation areas; provided that designated locations in such areas may be approved by the health authority for smoking, where no contamination hazards will result.

(5) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.348 EQUIPMENT AND UTENSILS: COMPOSITION, PLACEMENT, CLEANING, SANITIZING AND STORAGE (1) All equipment and utensils shall be so durable under normal conditions and operations as to be resistant to denting, buckling, pitting, chipping, crazing, excessive wear; and shall be capable of withstanding repeated scrubbing, scoring, and the corrosive action of cleaning and sanitizing agents and food with which they come in contact.

(2) Food and food product contact surfaces of equipment and utensils shall be smooth, free of breaks, open seams, cracks, chips, pits, holes, and similar imperfections. They shall be in good repair and shall be easily cleanable.

(3) Materials used as food contact surfaces of equipment and utensils shall, under use conditions, be corrosive resistant, relatively non-absorbent and non-toxic, except the corrosion resistant requirements shall not preclude the use of cast iron as a food contact material.

(4) Food contact surfaces of equipment and utensils shall be free of difficult to clean internal corners and crevices. Threads which routinely contact food shall be of sanitary design and no V-type threads shall be used in such a situation.

(5) Replacement food contact utensils and equipment shall comply with the applicable provisions of the Federal Meat Inspection Act, or be "nSf" tested.

(6) Lubricated bearings and gears of equipment shall be so constructed that lubricants cannot get into the food or onto food contact surfaces.

(7) All food contact equipment and utensils, unless designed for in-place cleaning, shall be accessible for manual cleaning and for inspection either without being disassembled or by disassembling without the use of tools, or by easy disassembling with the use of only simple tools kept available near the equipment, such as a mallet, a screwdriver, or an open end wrench.

(8) Equipment intended for in-place cleaning shall be so designed and constructed that cleaning and sanitizing solutions can be circulated throughout a fixed system and will contact all interior surfaces. The system must be self-draining or otherwise completely evacuated.

(9) Surfaces of equipment not intended for contact with food and food products, but which are exposed to splash, food debris, or otherwise require frequent cleaning, shall be reasonably smooth, washable, free of unnecessary ledges, projections or crevices, readily accessible for cleaning, and of such material and in such repair as to be readily maintained in a clean and sanitary condition.

(10) Cutting blocks and boards, work benches, and bakers tables shall be constructed of non-toxic material, smooth and free of cracks, crevices and open seams. Cutting boards shall be easily removable for cleaning. Replacement cutting surfaces shall conform to standards of applicable federal, state and local laws and regulations.

(11) Solder shall be of such formulation as to be non-toxic under use conditions, shall be corrosion resistant, and shall, consistent with good industrial practice in the refining of its constituent elements, be free of cadmium, antimony and other toxic materials.

(12) Single service articles shall be made from non-toxic materials and used only once.

(13) Equipment which is placed on tables or counters, unless readily movable, shall be sealed thereto or mounted on legs or feet at least 4 inches high and shall be so installed as to facilitate the cleaning of the equipment and areas adjacent thereto.

(14) Floor mounted equipment, unless readily movable, shall be sealed to the floor or shall be installed on raised platforms of concrete or other smooth masonry in such a manner as to prevent liquids or debris from seeping or settling underneath, between or behind such equipment in spaces which are not fully open for cleaning and inspection, or such equipment shall be elevated at least 6 inches above the floor. The space between adjoining units and between a unit and the adjacent wall shall be closed and sealed or sufficient space of at least 18 inches shall be provided to facilitate any cleaning between, behind and beside all such equipment.

(15) Aisles or working spaces between equipment shall be of sufficient width to permit employees to perform their duties without contamination of food or food contact surfaces by clothing or through personal contact.

(16) Utensils shall be thoroughly cleaned at least once daily. After contact with raw food, food contact surfaces of equipment and utensils, exclusive of cooking surfaces, used in the preparation, serving and display or storage of food shall be thoroughly cleaned to sight and touch prior to contact with cooked food or food products likely to be consumed without further cooking or heating to safe temperatures. The cooking surfaces of grills and similar cooking devices shall be cleaned at least once a day and shall be free of grease deposits and other soil.

(17) All food contact surfaces and utensils shall be thoroughly cleaned and sanitized after use on wild game or just prior to use on commercial meat.

(18) Non-food contact surfaces of all equipment used in the operation of a food plant including tables, counters, shelves, hoods, fans and refrigerators, etc. shall be cleaned at such frequency as is necessary to be free of accumulations of dust, dirt, food particles and other debris.

(19) Detergents and abrasives shall be rinsed off meat contact surfaces.

(20) Cloths used for wiping shall be clean and any such cloths used for wiping food contact surfaces shall be used for no other purpose. Wipe cloths shall be stored or rinsed in an approved sanitizing solution prior to each use.

(21) All food contact surfaces of equipment used in the preparation, display or storage of potentially hazardous food shall be sanitized prior to such use and following any interruption of operations during which contamination of the food contact surfaces is likely to have occurred. Where equipment utensils are used for the preparation of potentially hazardous food on a continuous or production-like basis, the food contact surfaces of such equipment and utensils shall be cleaned and sanitized at intervals throughout the day on a schedule approved by the health authority.

(22) Prior to washing, all equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(23) Effective concentrations of a suitable detergent shall be used in both manual and mechanical dishwashing.

(24) When manual washing is employed, equipment and utensils shall be thoroughly washed in a detergent solution which is kept clean, and shall then be rinsed free of such solution. All food contact surfaces of all other equipment and utensils shall be sanitized by either exposure for at least one-half minute to clean, hot water at a temperature of at least 170°F, or exposure for a period of at least one minute to a sanitizing solution containing:

(a) At least 50 ppm of available chlorine at a temperature not less than 75°F,

(b) At least 12.5 ppm of available iodine in a solution having a pH not higher than 5.0 and a temperature of not less than 75°F or a higher temperature than recommended by the manufacturer, or

(c) Any other chemical sanitizing agent which has been demonstrated to the satisfaction of the health authority to be effective and non-toxic under use conditions, and for which a suitable field test is available. Such sanitizing agents, in use solutions, shall provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of not less than 75°F.

(25) Equipment too large to treat by methods set forth in (24) above may be treated with live steam from a hose, in the case of equipment in which steam can be confined, or by rinsing with boiling water, or by spraying or swabbing with a chemical sanitizing solution of at least twice the minimum strength required for the particular sanitizing solution when used for immersion sanitizing.

(26) At least a 3-compartment sink shall be provided and used for manually washing food utensils and equipment in food establishments which are remodeled or start in business after the adoption of this rule.

(27) Sinks used for manual washing and sanitizing operations shall be of adequate length, width and depth to permit the complete immersion of the largest equipment and utensils (except large vats, etc.) and each compartment of such sinks shall be supplied with hot and cold running water. Baskets if used shall be of such design as to permit complete immersion of the utensils and equipment components being sanitized therein. These sinks shall not be used for hand washing or janitorial purposes.

(28) When hot water is used as the sanitizing agent in a manual operation, thermometers, accurate to  $\pm 2^{\circ}\text{F}$ , shall be provided convenient to the sink to permit frequent checks of the water temperature.

(29) Drainboards, of adequate size for proper handling of soiled utensils prior to washing and for cleaned utensils following rinsing or sanitization, shall be provided and shall be so located or constructed as not to interfere with the proper use of the equipment washing facilities; provided that drain boards shall not be required for cooks' and bakers' rinse sinks.

(30) Sinks, dish tables, drain boards, hooks and shelves shall be constructed of galvanized metal or better, suitably reinforced, of such thickness and design as to resist denting and buckling, and shall be installed so as to allow drainage of the stored equipment and/or utensils.

(31) When washers are used, the requirements set forth in subchapter 2 of this chapter shall apply.

(32) When an immersion type equipment washing machine is employed for equipment and utensil washing and sanitizing, the applicable requirements pertaining to manual dishwashing shall be met, provided that a 2-compartment system shall be deemed adequate when the temperature of wash water is maintained at or above  $140^{\circ}\text{F}$  and hot water at a temperature of at least  $170^{\circ}\text{F}$  is used as the sanitizing agent.

(33) Any other type of machine, device, or facilities and procedures may be approved by the health authority for cleaning or sanitizing equipment and utensils, if it can be readily established that such machine, device, or facilities and procedures will routinely render equipment and utensils clean to sight and touch, and provide effective bactericidal treatment as demonstrated by an average plate count per utensil surface examined of not more than 100 colonies.

(34) Food contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner so as to be protected from contamination. Cleaned equipment and utensils shall be handled so that fingers and thumbs do not contact inside surfaces.

(35) Cleaned and sanitized portable equipment and utensils shall be stored above the floor in a clean, dry location and suitable space and facilities shall be provided for such storage so that food contact surfaces are protected from splash, dust and other contamination. Utensils shall be air dried before being stored, or shall be stored in a self-draining position on suitably located hooks or racks constructed of corrosion resistant material. Wherever practicable, stored containers and utensils shall be covered or inverted.

(36) Single service articles shall be stored in closed cartons or containers which protect them from contamination.

(37) Such articles shall be stored, handled and dispensed in such a manner as to prevent contamination of surfaces which may come into contact with food and food products.

(38) Single service articles shall be used only once and discarded. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rule 49 reserved

**37.110.350 WATER SUPPLY** (1) The water supply shall be adequate, of a safe, sanitary quality, and from an approved public or private water supply system which is constructed, protected, operated and maintained in conformance with applicable state and local laws, ordinances and requirements; provided that, if approved by the health authority, a non-potable water supply system may be permitted within the establishment for purposes such as air conditioning, compressor cooling and fire protection, and the non-potable water pipes must be labeled as such or color coded.

(2) Hot and cold running water, under pressure, shall be provided in all areas where food is prepared, and where equipment and utensils are washed.

(3) All water not piped into the establishment directly from the source shall be transported, handled, stored and dispensed in a sanitary manner. Such water shall be given supplementary treatment under order of the health authority.

(4) Drinking water, if not dispensed through the water supply system of the food establishment, may be stored in a separate non-pressurized tank, reservoir or other container. Stored water shall be given supplementary treatment when approved by the health authority.

(5) Ice shall be made from water meeting the requirements of (1) of this rule, in an ice-making machine which is located, installed, operated and maintained so as to prevent contamination of the ice, or shall be obtained from a source approved by the health authority.

(6) Ice shall be handled, transported, and stored in such a manner as to be protected against contamination. If block ice is used, the outer surfaces shall be thoroughly rinsed so as to remove any soil before it is used for any purpose.

(7) If ice crushers are used, they shall be maintained in a clean condition and shall be covered when not in use.

(8) If ice is used, approved containers and utensils shall be provided for storing and serving it in a sanitary manner. Ice buckets, other containers and scoops, unless they are of the single service type, shall be of a smooth, impervious material, and designed to facilitate cleaning. They shall be kept clean, and shall be stored and handled in a sanitary manner. Only sanitary containers shall be used for the transportation or storage of any ice used in the food processing establishment. Canvas containers shall not be used unless provided with a sanitary, single service liner so as to completely protect the ice. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.351 SEWAGE DISPOSAL (1) All water-carried sewage shall be disposed of by means of a public sewerage system or an approved sewerage disposal system which is constructed and operated in conformance with applicable state and local laws, ordinances and regulations.

(2) Non water-carried sewage disposal facilities shall not be used except where water-carried disposal methods have been determined by the health authority to be impractical or impossible. Under such conditions, only facilities which have been approved by the health authority shall be used and operation of these facilities shall be in conformance with applicable state and local laws, ordinances and regulations. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.352 PLUMBING (1) All plumbing shall be sized, installed, and maintained in accordance with the Montana State Plumbing Code. No establishment shall have both a potable and non-potable water supply except by specific permission of the department. The potable water system shall be installed in such a manner so as to preclude the possibility of back siphonage. Grease traps shall not be required except in special cases as may be determined by the health authority.

(2) Refrigerators, cooking kettles, and similar types of enclosed equipment in which food, portable equipment, or utensils are placed shall not be directly connected to the drainage system. Each waste pipe from such equipment shall discharge into an open, accessible, individual waste sink, floor drain, or other suitable fixture which is properly trapped and vented. Indirect connections of drain lines from other equipment used in the preparation of food or washing of equipment and utensils may be required by the health authority when, in their opinion, the installation is such that backflow of sewage is likely to occur. Each walk-in refrigerator shall be equipped with a floor drain, so installed as to preclude the backflow of sewage into the refrigerator, or all parts of the floor of each walk-in refrigerator shall be graded to drain to the outside through a wastepipe, doorway, or other opening.

(3) Indirect waste connections shall be provided for drains, overflows, or relief vents from the water supply system.

(4) Drain lines from equipment shall not discharge waste water in such a manner as will permit the flooding of floors or the flowing of water across working or walking areas or into difficult to clean areas, or otherwise create a nuisance. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37. 110. 353 TOILET AND LAVATORY FACILITIES** (1) Toilet facilities shall be adequate and conveniently located and shall be accessible to the employees at all times. Where women and men are employed, toilets for each sex are required. Where the use of non-water-carried sewage disposal facilities has been approved by the health authority, such facilities shall be separated from the establishment. Toilet facilities provided for patrons shall meet the requirements of this rule.

(2) Toilet facilities shall be installed in accordance with applicable state and local laws, ordinances and regulations.

(3) Water closets and urinals shall be of a sanitary design.

(4) Toilet rooms shall be completely enclosed, and shall have tight-fitting, self-closing doors. Such doors shall not be left open except during cleaning or maintenance. If vestibules are provided, they shall be kept in a clean condition and in good repair.

(5) Toilet facilities including the toilet room and fixtures shall be kept clean and in good repair and free of objectionable odors. A supply of toilet tissue shall be provided at each toilet at all times. Easily cleanable receptacles shall be provided for waste materials and such receptacles in toilet rooms for women shall be covered. Such receptacles shall be emptied at least once a day and more frequently when necessary to prevent excessive accumulation of waste material.

(6) Lavatories shall be located within or immediately adjacent to all toilet rooms or vestibules. In all new establishments and establishments which are extensively altered, lavatories shall also be located within the area where food is prepared.

(7) Lavatories shall be adequate in size and number and shall be so located as to permit convenient and expeditious use by all employees.

(8) Lavatories shall be installed in accordance with applicable state and local laws, ordinances and regulations, or in the absence thereof, as approved by the health authority.

(9) Each lavatory shall be provided with hot and cold or tempered running water and soap. Where hot and cold running water is provided, a mixing valve or combination faucet is recommended and shall be required in new or extensively remodeled installations. Steam mixing valves are prohibited.

(10) An adequate supply of liquid hand cleaning soap or detergent shall be available at each lavatory. An adequate supply of sanitary towels or an approved hand drying device shall be available and conveniently located near the lavatory. Common towels are prohibited. Where disposable towels are used, easily cleanable waste receptacles shall be located conveniently near the handwashing facilities. Roller towels are not recommended.

(11) Lavatories, soap dispensers, hand drying devices and all other components of the handwashing facilities shall be kept clean and in good repair.

(12) Washing hands at facilities other than those specifically designated for this purpose shall be prohibited. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.354 WASTE DISPOSAL (1) All garbage and rubbish containing food waste shall be kept in containers constructed of durable metal or other approved types of materials which do not leak and do not absorb liquids. All containers shall be provided with tight-fitting lids or covers or shall be kept in a special vermin proofed room or enclosure, except bone, fat and meat trim may be kept in clean covered boxes under refrigeration until pickup, provided that it is removed at least twice weekly and does not cause obnoxious odors or interfere with the market operation.

(2) After being emptied, each container shall be thoroughly cleaned on the inside and outside in a manner so as not to contaminate equipment, utensils or food preparation areas. Brushes shall be provided for washing garbage containers and shall be used for no other purpose. Can washing machines, steam cleaning devices, or similar equipment shall be used where the operation is large enough to warrant this type of equipment. Waste waters from such cleaning operations shall be disposed of as sewage. Plastic garbage can liners are highly recommended.

(3) There will be a sufficient number of containers to hold all of the garbage and rubbish containing food waste which accumulates between periods of removal from the premises.

(4) Garbage and rubbish containing food waste shall be stored so as to be inaccessible to vermin. All other rubbish shall be stored in a manner approved by the health authority.

(5) Storage facilities shall be adequate for the proper storage of all garbage and rubbish. Storage areas shall be clean and shall not constitute a nuisance.

(6) Storage rooms or enclosures shall be constructed of easily cleanable, washable materials and shall be vermin proofed. The floors and the walls up to at least the level reached by splash or spray shall be of relatively non-absorbent materials. Garbage containers outside the establishment shall be stored either on a hard, smooth surface or on a rack which is at least 12 inches above the ground for a single bank of containers, or 18 inches above the ground for a multiple bank of containers.

(7) Food waste grinders shall be so constructed and installed as to comply with applicable state and local plumbing laws, ordinances, and regulations.

(8) All unrefrigerated garbage and rubbish shall be disposed of daily or at such other frequencies as may be approved by the health authority, and in such manner as to prevent a nuisance.

(9) Where material other than garbage is burned on the premises, an approved incinerator as required under ARM 17.8.316 shall be provided and shall be operated in such a manner as to comply with local regulations and so that it does not create a nuisance. Garbage shall not be burned. Areas around such incinerators shall be kept in a clean and orderly condition. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.355 VERMIN CONTROL (1) Effective and safe control measures shall be utilized to minimize the presence of rodents, flies, roaches and other vermin on the premises. The premises shall be kept in such condition as to prevent the harborage or feeding of vermin. All openings to the outer air shall be effectively protected against the entrance of insects by self-closing doors, closed windows, screening, controlled air currents, or other effective means.

(2) Screening material shall be not less than 16-mesh to the inch or equivalent.

(3) Screen doors to the outer air shall be self-closing and screens for windows, doors, skylights, transoms and other openings to the outer air shall be tight fitting and free of breaks.

(4) All openings to the outside shall be effectively protected against the entrance of rodents. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 56 through 59 reserved

**37. 110. 360 FLOORS, WALLS AND CEILINGS** (1) All floors shall be kept clean and in good repair. The floors of all food preparation, food storage, utensil washing rooms and areas, walk-in refrigerators, dressing or locker rooms, and toilet rooms shall be constructed of smooth, durable, non-absorbent, and easily cleanable materials such as concrete, terrazzo, ceramic tile, grease resistant grades of linoleum or plastic, or tight wood impregnated with plastic, provided that in areas subject to spilling or dripping of grease, blood, or fatty substances, such floor coverings shall be of grease, blood, and fat resistant materials, and provided further that floors of non-refrigerated, dry food storage areas need not be non-absorbent.

(2) Floor drains shall be provided in floors which are water flushed for cleaning or which receive discharges of water or other fluid waste from equipment. Such floors shall be graded to drain.

(3) Carpeting may be used on the floors of customer areas. Such carpeting shall be in good repair and kept clean, and must also be fire resistant.

(4) The walking and driving surfaces of all exterior areas where foods are sold shall be kept clean and free of debris, and shall be properly drained so that water will not accumulate. Such areas shall be surfaced with concrete or asphalt or with gravel or similar material effectively treated to facilitate maintenance and to minimize dust.

(5) Mats of duckboards, if used, shall be easily cleanable and be kept clean. They shall be of such design and size as to permit easy removal for cleaning.

(6) All floors hereafter installed in food preparation, storage, utensil washing rooms, walk-in refrigerators, dressing or locker rooms and toilet rooms shall provide a coved base juncture between the floor and wall with the cove extending up the wall at least 3 inches. In all cases, the juncture between the floor and wall shall be closed.

(7) All walls, ceilings, doors, windows, skylights and similar closures shall be kept clean and in good repair. The walls of all food preparation, storage, utensil washing and handwashing rooms or areas shall have light colored, smooth, easily cleanable surfaces, and such surfaces shall be washable up to at least the highest level reached by splash or spray.

(8) Wall covering materials used such as sheet metal, linoleum, plastic, paper and similar materials shall be so attached and sealed to the wall or ceiling as to leave no open spaces or cracks which would permit accumulation of soil or debris or provide harborage for vermin.

(9) Studs, joists and rafters shall not be left exposed in food preparation, storage, utensil washing areas or toilet rooms except as may be necessary for the installation of overhead tracks, rails and hoists. If left exposed, they shall be suitably furnished and shall be kept clean and in good repair.

(10) Light fixtures, decorative material and similar equipment and material attached to walls or ceilings shall be kept clean. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

37. 110. 361 LIGHTING AND VENTILATION (1) All rooms in which food is prepared, stored or served, where utensils are washed, locker rooms, toilet rooms and garbage and rubbish storage areas shall be well lighted and well ventilated.

(2) At least 20 food-candles of light shall be required on all working surfaces and in all working areas. Sources of artificial light shall be provided and used to the extent necessary to provide the required amounts of light in these areas when in use and when being cleaned.

(3) All food preparation areas must be equipped with a filtered, easily cleanable ventilation system. Ventilation systems shall comply with applicable state and local fire prevention requirements and shall, when vented to the outside air, discharge in such a manner as not to create a nuisance.

(4) Ventilation facilities shall be maintained and operated so that all areas are kept reasonably free from excessive heat, steam, condensation vapors, smoke or fumes. Effective air recovery systems may be used in the ventilation of these areas. All rooms, areas and equipment from which contaminated aerosols, obnoxious odors or noxious fumes or vapors may originate shall be effectively vented to the outside air.

(5) Ventilation hoods, fans and other devices shall be designed to prevent grease or condensate from dripping onto food or food preparation surfaces or non-food contact areas. Filters shall be readily removable for cleaning and replacement and shall be kept clean.

(6) Where intake air ducts are used they shall be designed and maintained so as to prevent the entrance of dust, birds, dirt, insects or other contaminating materials. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.362 DRESSING ROOMS AND LOCKERS** (1) Adequate facilities shall be provided for the orderly storage of employees' clothing and personal belongings. Dressing rooms or designated areas shall be provided when, as a routine procedure, employees change clothing within the establishment. Such designated areas shall be located outside of food preparation, storage and serving areas, and utensil washing and storage areas; provided that the health authority may approve such an area in a storage room where only completely packaged food is stored.

(2) Adequate lockers within the dressing rooms or areas or other suitable facilities within dressing rooms shall be provided and used for the storage of employees' coats, clothing and personal belongings.

(3) Dressing rooms or areas and lockers shall be kept in a clean condition. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.363 CLEANING OF PREMISES** (1) The food processing establishment and all parts of the property used in connection with operation of the establishment shall be kept neat, clean and free of litter and rubbish. None of the operations connected with the food processing establishment shall be conducted in any room used as living or sleeping quarters.

(2) Vacuum cleaning, wet cleaning or other dustless methods of floor and wall cleaning shall be used or dust arresting sweeping compounds and pushbrooms shall be employed. All such cleaning, except emergency floor cleaning, shall be done during those periods when the least amount of food is exposed.

(3) A utility sink shall be provided for house cleaning purposes. This sink shall not be used for food, utensil or hand washing.

(4) Laundered wiping cloths and similar cloth material used for cleaning shall be stored in a clean place and separate from other soiled materials. Aprons, uniforms and similar clothing shall be stored in a clean place and separate from similar soiled clothing. Non-absorbent containers or laundry bags shall be provided for storage of damp or soiled articles until removed for laundering. Such material shall be stored so as not to contaminate food, food products, utensils, equipment or clean laundry. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.364 LIVE ANIMALS AND BIRDS: PROHIBITED ON PREMISES**

(1) No live birds or animals shall be allowed in any area used for the storage, preparation of food or food products, or for the cleaning or storage of utensils, or in toilet rooms, employees' dressing rooms or areas, in vehicles used for transporting food or in any other area or facility in the food processing establishment, provided that guide dogs accompanying blind persons may be permitted in food sales areas. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, Eff. 11/4/73; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 65 through 69 reserved

**37.110.370 INSPECTIONS** (1) Food processing establishments, local health boards, local health officers, and sanitarians and sanitarians-in-training working for local health boards must comply with the inspection requirements of ARM 37.110.239, with the understanding that references to "food service establishment" in that rule will be read to be "food processing establishment".

(2) The department hereby adopts and incorporates by reference ARM 37.110.239, which specifies inspection requirements for food service establishments. Copies of the above referenced rule are available from the Department of Public Health and Human Services, Food and Consumer Safety Section, 1400 Broadway, P. O. Box 202951, Helena, Montana 59620-2951 [phone: (406) 444-2676]. (History: Sec. 50-50-103 and 50-50-305, MCA; IMP, Sec. 50-50-301, 50-50-302 and 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.371 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or meet each of the following requirements:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in food retail and/or food processing inspection techniques. The department is responsible for making training and standardization review available on a periodic basis.

(b) The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(i) Whenever a preliminary inspection is required by ARM 37.110.303, the food processing establishment is inspected for compliance with this subchapter within 10 days after receiving notice from the department that such a preliminary inspection is needed.

(ii) Each food processing establishment is inspected at least twice every 12 months, or on the schedule specified in a signed agreement with the department.

(iii) All the requirements of ARM 37.110.370 are met.

(iv) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(v) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) and (b) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department. (History: Sec. 50-50-305, MCA; IMP, Sec. 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)

## Subchapter 4

## Vending of Food and Beverages

**37. 110. 401 DEFINITIONS** (1) "Adulterated" A food is adulterated if it bears or contains any poisonous or deleterious substance which may be injurious to health, if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by regulation or in excess of such tolerance if one has been established, if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption, if it has been prepared, packed or stored under insanitary conditions whereby it may have become contaminated with filth or rendered injurious to health, or if the container is composed in whole or in part of a poisonous or deleterious substance which may render the contents injurious to health.

(2) "Commissary" means commissary, catering establishment, restaurant, or any other place in which food, beverage, ingredients, containers, or supplies are kept, handled, prepared or stored and directly from which vending machines are services.

(3) "Employee" means any operator or any person employed by him who handles any food, beverage, or ingredient to be dispensed through vending machines or who comes into contact with food contact surfaces of containers, equipment, utensils, or packaging materials used in connection with vending machine operations or who otherwise services or maintains one or more such machines.

(4) "Food" means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(5) "Health officer" means the legally designated health authority for the city, town, county or district.

(6) "Hot liquid food or beverage" means any liquid food or beverage, the temperature of which at the time of service to the consumer is at least 150°F.

(7) "Machine location" means the room, enclosed space, or area where one or more vending machines are installed and operated.

(8) "Misbranding" means the use of any written, printed or graphic matter upon or accompanying products or containers dispensed from vending machines, including signs or placards displayed in relation to such products so dispensed which is false or misleading or which violates department labeling requirements.

(9) "Operator" means any person who by contract, agreement or ownership takes responsibility for furnishing, installing, servicing, operating or maintaining one or more vending machines.

(10) "Person" means any individual, partnership, corporation, company, firm, institution, trustee, association, or any other public or private entity.

(11) "Product contact surface" means any surface of the vending machine, appurtenances, or containers which comes into direct contact with any food, beverage or ingredient.

(12) "Readily perishable food" means any food or beverage or ingredients consisting in whole or in part of milk, milk products, eggs, meat, fish, poultry, or other food capable of supporting rapid and progressive growth of micro-organisms which can cause food infections or food intoxication. However, products in hermetically sealed containers processed by heat to prevent spoilage and dehydrated, dry or powdered products so low in moisture content as to preclude development of micro-organisms are excluded from the terms of this definition.

(13) "Sanitarian" means the representative of the health officer when authorized.

(14) "Single-service article" means any utensil, container, implement, or wrapper intended for use only once in the preparation, storage, display, service or consumption of food or beverage.

(15) "Vending machine" means any self-service device offered for public use which, upon insertion of a coin, coins or token, or by other means, dispenses unit servings of food or beverage, either in bulk or in package, without the necessity of replenishing the device between each vending operation. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.402 SAMPLING, HEARING, DISPOSAL (1) Samples of food, beverage, or ingredient may be taken and examined by the health officer or sanitarian as often as may be necessary to determine freedom from adulteration or misbranding.

(2) The health officer may, on written notice to the operator, impound and forbid for sale any food or beverage which is adulterated or misbranded or which he has probable cause to believe to be adulterated or misbranded.

(3) After the operator has been given an opportunity for a hearing, the health officer may cause to be removed or destroyed any food or beverage which is adulterated or misbranded; provided that in case of misbranding which can be corrected by proper labeling, such food or beverage may be released to the operator for correct labeling under the supervision of the health officer. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 03 and 04 reserved

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37.110.405 FOOD, BEVERAGE AND INGREDIENT REQUIREMENTS:

GENERAL (1) Foods, beverages, and ingredients intended for sale through vending machines shall be obtained from sources complying with federal and department laws and rules. Such products shall be clean and wholesome, free from spoilage, and shall be processed, prepared, handled and stored in such a manner as to protect against contamination and adulteration. All product contact surfaces of containers and equipment shall be protected from contamination.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) All foods, beverages and ingredients offered for sale through vending machines shall be manufactured, processed and prepared in commissaries or establishments which comply with all applicable local, state and federal laws and rules.

(b) All foods, beverages and ingredients offered for sale through vending machines shall be wholesome and free from spoilage, contamination and adulteration.

(c) All foods, beverages and ingredients shall be stored or packaged in clean protective containers, and shall be handled, transported and vended in a sanitary manner. Wet storage or packaged products is prohibited. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.406 PERISHABLES** (1) Readily perishable foods offered for sale through vending machines shall be dispensed to the consumer in the individual original container or wrapper into which it was placed at the commissary or at the manufacturer's or processor's plant, or such products shall be dispensed into single-service containers. In those vending machines dispensing readily perishable foods, beverages or ingredients in bulk, the bulk supplies of such foods, beverages or ingredients shall be transferred only to a bulk vending machine container and appurtenances which are clean and have been subjected to an approved bactericidal process.

(2) Readily perishable foods or ingredients within the vending machine shall be maintained at a temperature not higher than 50° F or a temperature not lower than 150° F. Vending machines dispensing readily perishable foods shall be provided with controls which insure the maintenance of these temperatures at all times, provided that an exception may be made for the actual time required to fill or otherwise service the machine and for a maximum recovery period of 30 minutes following completion of filling or servicing operations. Such controls shall also place the machine in an inoperative condition until serviced by the operator in the event of power failure or other conditions which permit the food storage compartment to attain a temperature above 50° F or below 150° F, whichever is applicable. Vending machines dispensing readily perishable food shall be provided with a thermometer which, to an accuracy of  $\pm 2^{\circ}$  F indicates the air temperature of the food storage compartment.

(3) With the exception of product contact surfaces of bulk milk vending machines for which separate provisions for cleaning and bactericidal treatment are specified in ARM 37.110.407(2), all multi-use containers or parts of vending machines which come into direct contact with readily perishable foods, beverages or ingredients shall be removed from the machine daily and shall be thoroughly cleaned and effectively subjected to an approved bactericidal process at the commissary or other approved facility, provided that the requirement for daily cleaning and bactericidal treatments may be waived for those contact surfaces which are maintained at all times at a temperature of not higher than 50° F or at a temperature of not lower than 150° F, whichever is applicable. Such parts shall, after cleaning and bactericidal treatment, be protected from contamination. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37. 110. 407 MILK AND MILK PRODUCTS (1) Milk and fluid milk products offered for sale through vending machines shall be dispensed only in individual, original containers or from bulk containers into which such product was placed at the milk plant, provided that in the case of vending machines that use fluid milk products as an ingredient in hot liquid foods or beverages, such milk product may be transferred at the machine location from the individual original container of not more than one-half gallon capacity to a vending machine bulk container which is clean and has been subjected to an approved bactericidal process in accordance with ARM 37. 110. 406(3); provided further that in such transfer, the entire contents of the individual original container are used.

(2) All multi-use parts of any bulk milk vending machine which comes into direct contact with the milk or milk product shall be effectively cleaned and bactericidally treated at the milk plant, provided that single-service dispensing tubes which receive bactericidal treatment at the fabricating plant and which are individually packaged in such manner as to preclude contamination, may be sealed with 2 seals in such manner as to make it impossible to withdraw any part of its contents without breaking one seal and impractical to introduce any substance without breaking the other seal. The delivery tube and any milk contact parts of the dispensing device shall be attached at the milk plant and shall be protected by a moisture proof covering which shall not be removed until after the container is placed in the refrigerated compartment of the vending machine. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 08 and 09 reserved

**37.110.410 NONPERISHABLE FOOD MACHINES** (1) All parts of vending machines which come into direct contact with other than readily perishable foods shall be thoroughly cleaned and subjected to bactericidal treatment by methods approved by the health officer. The frequency of such cleaning and bactericidal treatment shall be established by the health officer based upon the type of product being dispensed.

(2) A record of such cleaning and bactericidal treatment operations shall be maintained by the operator in each machine and shall be current for at least the past 30 days. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.411 SINGLE-SERVICE CONTAINERS** (1) All single-service containers which receive food or beverage from machines dispensing such products in bulk shall be purchased in sanitary cartons or packages which protect the containers from contamination, shall be stored in a clean dry place until used, and shall be handled in a sanitary manner. Such containers shall be stored in the original carton or package in which they were placed at the point of manufacture until introduced into the container magazine or dispenser of the vending machine. Single-service containers stored within the vending machine shall be protected from manual contact, dust, insects, rodents and other contamination. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.412 MACHINE LOCATION** (1) The machine location shall be such as to minimize the potential for contamination of the product, shall be easily cleanable, and shall be kept clean.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) Each vending machine shall be located in a room, area, or space which can be maintained in a clean condition and which is protected from overhead leakage from drains and piping. Each vending machine shall be so located that the space around and under the machine can be easily cleaned and so that insect and rodent harborage is not created.

(b) The floor area upon which vending machines are located shall be reasonably smooth, of cleanable construction and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.413 MACHINE CONSTRUCTION: EXTERIOR** (1) The exterior construction of the vending machine shall be such as to facilitate cleaning and to minimize the entrance of insects and rodents, and the exterior of the machine shall be kept clean. Service connections shall be such as to protect against unintentional or accidental interruption of servicing to the machine.

(2) This section shall be deemed to have been satisfied when the following requirements are met:

(a) The vending machine shall be of sturdy construction and the exterior shall be so designed, fabricated and finished as to facilitate its being kept clean, and to minimize the entrance of insects and rodents.

(b) Door and panel access openings to the product and container storage spaces of the machine shall be tight fitting and if necessary, gasketed so as to preclude the entrance of dust, moisture, insects and rodents.

(c) All necessary ventilation louvers or openings into vending machines shall be effectively screened against insects and rodents. Such screening material shall not be less than 16-mesh or equivalent.

(d) In all new vending machines in which a condenser unit is an integral part of the machine, such unit shall be sealed from the product and container storage spaces.

(e) Unless the vending machine is sealed to the floor so as to prevent seepage underneath or can be manually moved with ease, one or more of the following provisions shall be utilized to facilitate cleaning operations:

(i) The machine shall be mounted on legs 6 or more inches in height; or

(ii) The machine shall be mounted on casters or rollers; or

(iii) The machine shall be mounted on gliders which permit it to be easily moved.

(f) All service connections through an exterior wall of the machine, including water, gas, electrical and refrigeration connections shall be grommets or sealed to prevent the entrance of insects and rodents. All connections to such utilities shall be such as to discourage their unauthorized or unintentional disconnection. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37. 110. 414 MACHINE CONSTRUCTION: INTERIOR (1) All interior surfaces and component parts of the vending machine shall be so designed and constructed as to permit easy cleaning, and shall be kept clean. All product contact surfaces of the machine shall be smooth, non-toxic, corrosion resistant, and relatively nonabsorbent material, and shall be capable of withstanding repeated cleaning and bactericidal treatment by normal procedures. Such surfaces shall be protected against contamination.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) The non-product contact surfaces of the interior vending machines shall be so designed and constructed as to permit easy cleaning, and to facilitate maintenance operations. Inaccessible surfaces or areas shall be minimized.

(b) All product contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks and chipped places. The design of such surfaces shall be such as to preclude routine contact between food and V-type threaded surfaces. All joints and welds in product contact surfaces shall be smooth, and all internal angles and corners of such surfaces shall be rounded to facilitate cleaning.

(c) All product or ingredient contact surfaces of vending machines, including containers, pipes, valves and fittings shall be constructed of non-toxic corrosion resistant and relatively nonabsorbent materials and shall be kept clean. All containers, valves, fittings, chutes and faucets which are in contact with food shall be easily and readily removable and so fabricated as to be easily disassembled and when disassembled, all surfaces shall be visible for inspection and cleaning. In machines of such design that product contact pipes or tubing are not readily removable, in-place cleaning of such pipes and pipe fittings may be permitted, provided they are so arranged that cleaning and bactericidal solutions can be circulated through the fixed system, such solutions will contact all interior surfaces, the system is self-draining or otherwise completely evacuated, and the cleaning procedures result in thorough cleaning of the equipment.

(d) The openings into all non-pressurized containers used for the storage of vendable foods and ingredients, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover surface. Any port opening through the cover shall be flanged upward at least 3/8 inch and shall be provided with a cover which overlaps the flange. Condensation or drip deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the container unless a water-tight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of a material which is non-toxic, relatively stable, and relatively nonabsorbent and shall have a smooth surface. All gasket retaining grooves shall be readily cleanable.

(e) The delivery tube or chute and orifice of all bulk food and bulk beverage vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall be such as to divert condensation or other moisture from the normal filling position of the container receiving the food or beverage. The vending stage of such machines shall be provided with a tight fitting self-closing door or cover which is kept closed except when the machine is in the process of delivering food or beverage.

(f) The product storage compartment within vending machines dispensing packaged liquid products shall be so constructed as to be self-draining or shall be provided with a drain outlet which permits complete drainage of the compartment. All such drains shall be easily cleanable.

(g) Opening devices which come into contact with the product or the product contact surface of the containers shall be constructed of smooth, non-toxic corrosion resistant and relatively nonabsorbent materials. Unless the opening device is of a single-service type, it shall be readily removable for cleaning and shall be kept clean. Parts of multi-use opening devices which come into contact with the product or product contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents and other contamination, and such parts shall be readily removable for cleaning and shall be kept clean. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 15 through 19 reserved

37. 110. 420 WATER SUPPLY (1) The water supply shall conform with the construction, operation and sanitation standards of the department. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37. 110. 421 WASTE DISPOSAL (1) All wastes shall be properly disposed of, and pending disposition, shall be kept in suitable containers so as to prevent creating a nuisance.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) All trash and other waste material shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness and shall be disposed of in a manner approved by the health officer or sanitarian.

(b) Self-closing, leak-proof, readily cleanable, plainly labeled and designated waste container or containers shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures and other single-service items. Such waste containers shall not be located within the vending machine, provided that an exception may be made for those machines dispensing only packaged products with crown closures, in which case the closure receptacle may be located within the machine. Suitable racks or cases shall be provided for multi-use containers or bottles.

(c) Containers shall be provided within all machines dispensing liquid products in bulk for the collection of drip, spillage, overflow or other liquid wastes.

(d) An automatic shut-off device shall be provided which will place the vending machine out of operation before such container overflows. Containers or surfaces on which such wastes may accumulate shall be readily removable for cleaning, shall be easily cleanable, and shall be corrosion resistant. If liquid wastes from drip, spillage or overflow which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an approved air gap. (History: Sec. 50-50-103 MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.422 TRANSPORTATION (1) Foods, beverages, and ingredients and product contact surfaces of containers, equipment and supplies shall be protected from contamination while in transit to machine location. Readily perishable foods and beverages while in transit shall be maintained at a temperature not higher than 50°F or not lower than 150°F.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) Food, beverages or ingredients while in transit to vending machine locations shall be protected from the elements, dirt, dust, insects, rodents, and other contamination. Similar protection shall be provided for single-service containers and for the product contact surfaces of equipment, containers, and devices in transit to machine locations.

(b) Readily perishable foods or beverages, while in transit to vending machine locations shall be maintained at a temperature of not higher than 50°F or not lower than 150°F. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 23 through 26 reserved

**37.110.427 EMPLOYEE REQUIREMENTS** (1) Employees shall keep their hands clean and shall wear clean outer garments while engaged in handling food or beverages or product contact surfaces of utensils or equipment.

(2) This rule shall be deemed to have been satisfied when the following requirements are met:

(a) Employees shall wash their hands immediately prior to engaging in any vending machine servicing operation which may bring them into contact with foods, beverages, or ingredients or with product contact surfaces of utensils, containers or equipment. While engaged in such servicing operations, employees shall wear clean outer garments.

(3) No employee with any disease in a communicable form, or who is a carrier of such disease shall work in any commissary or in vending machine operations in any capacity which brings him into contact with the production, handling, storage, or transportation of foods, beverages, ingredients or equipment used in vending machine operations, and no operator shall employ in any such capacity any such person, or any person suspected of having any disease in a communicable form or of being a carrier of such disease. Any employee who has a discharging or infected wound, sore or lesion on hands, arms, or any exposed portion of the body shall be excluded from those operations which will bring him into contact with food, beverages, utensils or equipment used in vending machine operations.

(a) Any operator among whose employees there occurs a communicable disease or who suspects or has become a carrier of such disease shall notify the health officer immediately.

(b) When suspicion arises as the possibility of transmission of infection from any employee, the health officer is authorized to require any or all of the following measures:

(i) The immediate exclusion of the employee from all commissaries and vending machine operations.

(ii) The immediate closing of the commissaries and operations concerned until, in the opinion of the health officer, no further danger of disease exists.

(iii) Adequate medical examinations of the employee and of his associates with such laboratory examinations as may be indicated. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; Eff. 12/31/72; TRANS, from DHES, 2001 MAR p. 2423.)

**37.110.428 INSPECTIONS** (1) The local health officer or sanitarian or sanitarian-in-training employed by or contracted with the local board of health must perform an inspection of each licensed commissary or machine located within the board's jurisdiction at least twice every 12 months, unless that schedule is modified by signed agreement with the department.

(2) The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department, after proper identification, must be permitted to examine any commissary or machine location at any reasonable time for the purpose of making inspections to determine compliance with this subchapter and must be permitted to examine the records relating to the commissary or machine to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.

(3) Whenever an inspection of a commissary or machine location is made, the findings must be recorded on an inspection form approved by the department.

(4) The inspection form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations must be accomplished within the period specified.

(5) The inspection form shall state that failure to comply with any time limits for corrections may result in an order to cease operations. (History: Sec. 50-50-103 and 50-50-305, MCA; IMP, Sec. 50-50-301, 50-50-302 and 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)

**37. 110. 429 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES** (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(a) Each licensed commissary or machine located within the jurisdiction of the local board of health is inspected at least twice every 12 months, or on the schedule specified in a signed agreement with the department.

(b) Quarterly inspection reports are submitted to the local board of health and the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(c) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 years and copies of the documentation are submitted or otherwise made available to the department upon request.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) through (d) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department. (History: Sec. 50-50-305, MCA; IMP, Sec. 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)

Subchapters 5 through 7 reserved

## Subchapter 8

## Drinking Water and Ice

**37.110.801 DRINKING WATER** (1) Any person engaged in the production, packaging, manufacturing or processing of drinking water, culinary bottled water, or water otherwise processed and packaged for human consumption, is subject to the licensing requirements of 50-50-201, MCA, for food manufacturing establishments. Any manufacturing or bottling plant located in a state, territory, or nation other than Montana that prepares water in bottles or other containers for drinking or culinary purposes for sale in Montana must also be licensed by the department.

(2) Each food manufacturing establishment in Montana where water is prepared for sale in bottles or other containers for human consumption and the sources of all such water must be inspected at least once each year by the local health officer, sanitarian or sanitarian-in-training employed by or contracted with the local board of health having jurisdiction. A copy of each inspection must be submitted to the department within 30 days after the inspection occurs.

(3) Each food manufacturing establishment in Montana where water is prepared for sale in bottles or other containers for human consumption must:

(a) obtain its water from a community public water system approved by the water quality division of the department of environmental quality, or, if water is obtained from a separate or independent system, that system must comply with the statutes governing public water supplies, 75-6-101 et seq., MCA, the rules governing public water supplies, ARM 17.38.201 et seq., and the rule governing plans for public water supplies or wastewater systems, ARM 17.38.101.

(b) maintain sampling records demonstrating compliance with the bacteriologic, chemical and radiologic sampling requirements specified in (6)(b) of this rule for at least 12 months after the date of sampling.

(4) The operation of all food manufacturing establishments involved in producing, packaging, manufacturing, or processing drinking or bottled water and the products marketed must comply with these rules and with the Montana Food, Drug and Cosmetic Act, 50-31-101 et seq., MCA; the food manufacturing establishment rules, ARM 37.110.301 et seq.; the federal standards regarding food labeling, 21 CFR 101; the federal quality standards for foods with no identity standards, 21 CFR 103; the federal standards for processing and bottling of bottled drinking water, 21 CFR 129; and the Fair Packaging and Labeling Act, 15 USC 1451 et seq.

(5) Every food manufacturing establishment desiring to sell, market or distribute bottled water in Montana, whether located in Montana or not, must apply for a license on a form provided by the department, which must be signed by the owner or the owner's legal representative, and must submit the fee required by 50-50-206, MCA. Such fee must be payable to the department and the application must be postmarked no later than midnight on December 31 of each year. Submission of a renewal application and fee after this time will require the food manufacturing establishment to submit the late fee required by 50-50-206, MCA. The license year is January 1 through December 31.

(6) In addition to the fee, the late fee, if applicable, and the application form identified in (5) above, the food manufacturing establishment must submit the following to the department for review:

(a) A certification affidavit from the state or local health officer, sanitarian or sanitarian-in-training employed by or contracted with the local board of health having jurisdiction, affirming that the establishment meets the requirements of 21 CFR 103 and 129;

(b) If the source water is not mineral water, copies of the most recent inorganic, volatile organic, organic chemical and radiological analyses of the establishments water showing compliance of the source water with the maximum contaminant levels for regulated water systems as required by 40 CFR 141; or a certification affidavit from the state or local health officer, sanitarian, or sanitarian-in-training employed by or contracted with the local board of health having jurisdiction, affirming that the water source complies with these standards;

(c) Test results for pesticides and synthetic organic chemicals, if the department determines such tests are necessary or if random testing has shown there is or may be contaminants present at levels which may adversely affect public health;

(d) A copy, photocopy, or printer's proof of each label for each product to be marketed and for each size to be marketed;

(e) A description of the source of the water, water treatment used, all substances added to the water, and any other documentation required by the department to verify that labels and terminology used on the labeling conform with applicable law; and

(f) For products labeled "mineral water" or for a label containing the term "mineral water", copies of the results of laboratory testing of mineral content and total dissolved solids (TDS) of the product, obtained during the 12 months preceding the license year from an agency approved to test drinking water by the department or another public health agency.

(7)(a) The department hereby adopts by reference:

(i) ARM 37.110.301 et seq., setting standards for food manufacturing establishments;

(ii) ARM 37.110.201 et seq., setting standards for public water supplies;

(iii) ARM 17.38.101, governing plans for public water supplies;

(iv) 21 CFR 101, setting food labeling standards;

(v) 21 CFR 103, setting quality standards for foods with no identity standards;

(vi) 21 CFR 129, setting standards for processing and bottling bottled drinking water;

(vii) 40 CFR 141, containing maximum contaminant levels for drinking water, and

(viii) 15 USC 1451 et seq., containing federal law on packaging and labeling.

(b) Copies of these statutes and rules may be obtained, upon payment of copying costs, from the Department of Public Health and Human Services, Food and Consumer Safety Section, 1400 Broadway, P. O. Box 202951, Helena, Montana 59620-2951. (History: Sec. 50-31-104, 50-31-201 and 50-50-103, MCA; IMP, Sec. 50-31-104, 50-31-201 and 50-50-103, MCA; NEW, 1994 MAR p. 2832, Eff. 10/28/94; AMD, 1995 MAR p. 368, Eff. 3/17/95; TRANS, from DHES, 2001 MAR p. 2423.)

37.110.802 ICE (1) This rule applies only to ice that is intended for human consumption and is sold in packaged form or in bulk form for food, drink or culinary purposes. This rule does not apply to persons, hotels, restaurants, inns, caterers, food service contractors, or theaters that manufacture or furnish ice solely to or for their customers in a manner that is incidental to the production, sale or dispensing of other goods and services.

(2) Natural ice that is cut from water on a stream, creek, river, lake, pond, or other body of surface water may not be used as ice for human consumption.

(3) Except as provided in (1) above, any person who manufactures, transports, distributes, sells or provides ice, with or without charge, to the public must obtain a food manufacturing license and must comply with these rules and with the statutes governing food manufacturing establishments, 50-50-101 et seq., MCA; the rules governing food manufacturing establishments, ARM 37.110.301, et seq.; and the rules governing public water systems, ARM 17.38.201 et seq.

(4) Ice plants must be operated in a clean and sanitary manner. The room in which ice production occurs may not be used for any purposes other than ice or food production and the storage and refrigeration of ice or food.

(5) Ice production facilities shall meet the provisions of 21 CFR 110, which provides standards for current good manufacturing practice in manufacturing, packing, or holding human food.

(6) Ice produced and packaged for sale to the public must be labeled in accordance with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and in accordance with 21 CFR 101, which establishes federal food labeling standards, and must display legible labeling including, but not limited to, the identity of the product, the net weight or contents of the package, and the name and place of business of the manufacturer, packer, distributor, seller, or provider.

(7) Packaged ice transportation, hauling vehicles, and bulk containers, including display or storage freezers, are regarded as a part of the licensed premises and are subject to review or inspection by the department or the local health officer, sanitarian, or sanitarian-in-training employed by or contracted with the local board of health having jurisdiction, prior to issuance or renewal of its license or on a regular annual inspection.

(8) The food manufacturing establishment must sample and have analyzed its manufactured ice products, and the waters from which the ice is made, at least once a month for compliance with the maximum microbiological contaminant levels contained in ARM 17.38.207, and send the results to the department. The food manufacturing establishment is also required to comply with the bacteriological quality sampling provisions of ARM 17.38.215 (3) through (7) for transient non-community water systems. The department may increase the required sampling frequency based upon sampling results or other conditions which indicate an increased risk to the health of the users of the product. The department may decrease the required sampling frequency to quarterly or biannually based on a showing that the source consistently does not contain the contaminant, is either a community water system or a groundwater source not under direct influence of surface water, and that the samples consistently meet the required sanitary standards, rendering the source and operation generally not vulnerable to microbiological contamination.

(9) The delivery of ice to the customer must be done under sanitary conditions. Ice must be packaged in durable freezable containers labeled in conformance with the labeling requirements as described in (6) above. Boxes or containers intended for non-food use or for use in packaging another food are not acceptable transport containers. All boxes, containers, cases or contact surfaces within bins or transport vehicles must be constructed of food grade materials.

(10) Natural or manufactured ice that does not conform to standards set forth in this rule must be conspicuously identified or labeled as unsafe or inedible and may not be sold or distributed for human consumption. Such ice may be used for cooling or refrigeration purposes only if such use does not permit it to come in direct contact with food or drink meant for human consumption. If such ice is sold or distributed for refrigeration purposes, the seller or distributor must notify the buyer or consumer that it is not safe for human consumption.

(11) The department hereby adopts by reference ARM 37. 110. 301 et seq., setting standards for food manufacturing establishments; ARM 17. 38. 201, et seq., setting standards for public water supply systems; 21 CFR 110, setting standards for packing, manufacturing, or holding human food; and 21 CFR 101, setting food labeling standards. Copies of these rules may be obtained, upon payment of copying costs, from the Department of Public Health and Human Services, Food and Consumer Safety Section, 1400 Broadway, P. O. Box 202951, Helena, Montana 59620-2951. (History: Sec. 50-31-104, 50-31-201 and 50-50-103, MCA; IMP, Sec. 50-31-104, 50-31-201 and 50-50-103, MCA; NEW, 1994 MAR p. 2832, Eff. 10/28/94; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 03 and 04 reserved

**37.110.805 COMMON CARRIERS** (1) Water and ice provided by common carriers for drinking or culinary purposes in railway trains, buses, or other public transportation conveyances and in all railway stations in Montana must be taken from supplies which conform to standards for drinking water contained in 40 CFR 141 and 40 CFR 142.

(2) The department hereby adopts by reference 40 CFR 141, setting maximum contaminant levels and other standards for drinking water, and 40 CFR 142, establishing procedures for implementing and enforcing drinking water standards. Copies of these rules may be obtained, upon payment of copying costs, from the Department of Public Health and Human Services, Food and Consumer Safety Section, 1400 Broadway, P. O. Box 202951, Helena, Montana 59620-2951. (History: Sec. 50-50-103, MCA; IMP, Sec. 50-50-103, MCA; NEW, 1994 MAR p. 2832, Eff. 10/28/94; TRANS, from DHES, 2001 MAR p. 2423.)

Rules 06 through 09 reserved

**37. 110. 810 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES** (1) To qualify for reimbursement under 50-50-305, MCA, for regulation of sources of drinking water and ice, a local board of health must either enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:

(a) Ensure that, at least once per year, each plant or establishment within the jurisdiction of the local board of health where water is prepared for sale in bottles or other containers or artificial ice is manufactured, and the sources of all such water, are inspected, either by the foregoing individuals or by another government agency and, at the same time, that a sample of the water is submitted to a DEQ-approved laboratory for analysis for contaminants.

(b) Submit quarterly inspection reports to the department within 10 days following the close of each quarter of the fiscal year (1st quarter--September 30; 2nd quarter--December 31; 3rd quarter--March 31; 4th quarter--June 30) on forms approved by the department.

(c) Retain for 5 years all documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, and, upon request, submit copies of the documentation to the department or otherwise make it available to the department.

(2) A failure by the local board of health to meet all of its responsibilities under the cooperative agreement or under (1)(a) through (d) above shall result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department. (History: Sec. 50-50-305, MCA; IMP, Sec. 50-50-305, MCA; NEW, 1994 MAR p. 2941, Eff. 11/11/94; AMD, 1995 MAR p. 26, Eff. 11/11/94; TRANS, from DHES, 2001 MAR p. 2423.)